

No. 15963 ✓

United States
Court of Appeals
for the Ninth Circuit

CLAIRE B. MORSE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

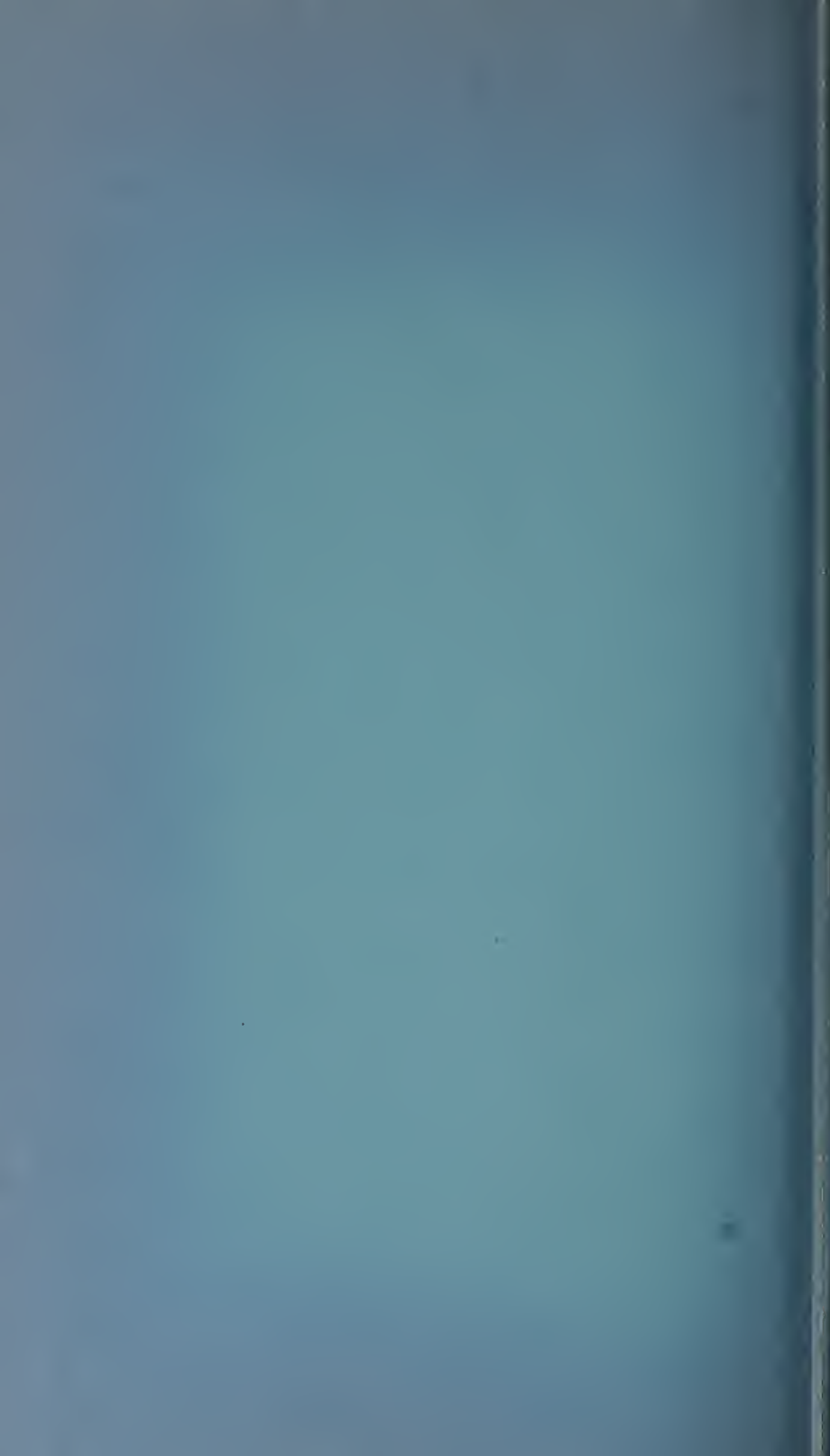
Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division

FILED

JUL - 8 1958

PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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LAUGHLIN E. WATERS,
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EDWARD R. McHALE,
Assistant United States Attorney,
Chief, Tax Division,

JOHN G. MESSER,
Assistant U. S. Attorney,
808 Federal Building,
Los Angeles 12, California. [1]*

* Page numbers appearing at bottom of page of Original Transcript of Record.

United States District Court, Southern District
of California, Central Division

No. 20638-HW Civil

CLAIRE B. MORSE, Plaintiff,

vs.

ROBERT A. RIDDELL, District Director of In-
ternal Revenue, Defendant.

UNITED STATES OF AMERICA,
Plaintiff in Intervention,

vs.

CLAIRE B. MORSE,
Defendant in Intervention.

COMPLAINT IN INTERVENTION OF UNITED
STATES OF AMERICA TO COLLECT
FEDERAL INCOME TAXES

Comes Now the United States of America, and
by leave of the Court, files this, its Complaint in
Intervention herein and alleges:

I.

That the United States of America is a sovereign
and corporate body politic.

II.

This action has been authorized by the Commis-

sioner of Internal Revenue and is brought under the direction of the Attorney General of the United States. [2]

III.

The Court has jurisdiction under Title 28, United States Code, Sections 1340 and 1345, and Title 26, United States Code, Section 7401.

IV.

The defendant in intervention resides at or near Los Angeles, Los Angeles County, California.

V.

Said Commissioner made an assessment against Borin Art Products Corporation, Chicago, Illinois, of declared value excess profits tax and excess profits tax, penalties and interest, for the calendar year 1942 and for the period January 1, 1943, through April 30, 1943, in the amount of \$110,334.97 and overassessment in income tax in the amount of \$2,046.98.

Said Commissioner certified the list of each of said assessments to the then Collector of Internal Revenue for the District of Chicago, Illinois, by whom notice was given to, and demand for payment of the amount thereof was made upon, said Borin Art Products Corporation. Said corporation paid no portion of said deficiencies.

VI.

Said Borin Art Products Corporation was dis-

solved, and on or about May 1, 1943, assets of said corporation were transferred to defendant in intervention in the amount of \$10,705.69.

VII.

Said Commissioner assessed against defendant in intervention, as transferee of assets of Borin Art Products Corporation, the amount set forth above, plus interest and penalties according to law, as follows: [3]

Taxable Period: Year 1942. Amount Assessed: \$11,177.24. Date of Assessment: June 15, 1951. Dates, Notices & Demands: June 26, 1951. Unpaid Balance: \$11,177.24.

Taxable Period: 1/1/43 thru 4/30/53. Amount Assessed: \$3,588.89. Date of Assessment: June 15, 1951. Dates, Notices & Demands: June 26, 1951. Unpaid Balance: \$3,588.89.

No part of any of said unpaid balances, totaling \$14,766.13, has been paid.

VIII.

Said defendant in intervention has, at various times, executed consents fixing period of limitation upon assessments of liability at law or in equity for income and profits tax against a transferee. One of said consents provided that the amount of liability as transferee might be assessed at any time on or before June 30, 1951. Said liability was assessed on June 15, 1951, as set forth in paragraph VII above.

IX.

It is alleged upon information and belief that on or about May 1, 1943, defendant in intervention, Claire B. Morse (then Claire Borin) took over and personally received property and things of value from said Borin Art Products Corporation of a value of not less than \$10,000 without giving anything of value in exchange therefor.

X.

Ever since the taking of said property and things of value, as alleged in paragraph V of this complaint in intervention, the said Borin Art Products Corporation was and is without property or things of value.

Wherefore, plaintiff in intervention prays:

1. That the defendant in intervention be required to account to this Court for all property and things of value taken over by her as alleged in paragraph X of this complaint in intervention.
2. That it be further adjudged and decreed that such property and things of value taken over as aforesaid constitute a trust fund for the payment of the tax liabilities alleged in this complaint in intervention.
3. That if the defendant in intervention no longer retains such property and things of value, taken over as aforesaid, that the plaintiff in intervention have and recover judgment for the amount of the value thereof or the amount of said tax

liabilities, whichever is the lesser, with interest thereon as provided by law.

LAUGHLIN E. WATERS,
United States Attorney,
EDWARD R. McHALE,
Asst. U. S. Attorney,
Chief, Tax Division,
JOHN G. MESSER,
Asst. U. S. Attorney,
/s/ JOHN G. MESSER,

Attorneys for Plaintiff in Intervention, United
States of America. [5]

It Is So Ordered this 31st day of May, 1957.

/s/ HARRY C. WESTOVER,
Judge.

Affidavit of Service by Mail Attached. [6]

[Endorsed]: Filed May 31, 1957.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT
IN INTERVENTION

Comes now the defendant in intervention, Claire B. Morse, by her attorney, George T. Altman, and files this answer to the complaint in intervention.

I.

Admits the allegations in paragraph I of the complaint in intervention.

II.

Admits the allegations in paragraph II of the complaint in intervention. [7]

III.

Admits the allegations in paragraph III of the complaint in intervention.

IV.

Admits the allegations in paragraph IV of the complaint in intervention.

V.

Defendant in intervention is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph V of the complaint in intervention.

VI.

Denies that assets of Borin Art Products Corporation were transferred to defendant in intervention in the amount of \$10,705.69, or in any other amount. Admits that corporation was dissolved.

VII.

Defendant in intervention is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph VII of the complaint in intervention. If any such assessment was made, then defendant in intervention denies that such assessment was lawfully made.

VIII.

Admits that she executed consents fixing period of limitation upon assessment and that one of said consents provided that the amount of liability as transferee might be assessed at any time on or before June 30, 1951. Denies that she had any such liability as transferee. As to each and every other allegation in paragraph VIII of the complaint in intervention, defendant in intervention states that she is without knowledge or information sufficient to form a belief as to the truth of each and every such allegation. [8]

IX.

Denies the allegations contained in paragraph IX of the complaint in intervention.

X.

Admits that from and after May 1, 1943, Borin Art Products Corporation was without property or things of value. Denies any taking of property or things of value and denies each and every other allegation contained in paragraph X of the complaint in intervention.

XI.

Answering further, defendant in intervention states that this proceeding in intervention is barred by the statute of limitations.

Wherefore, defendant in intervention prays that the complaint in intervention be dismissed with

prejudice and with costs to the defendant in intervention.

/s/ GEORGE T. ALTMAN,
Attorney for Defendant in
Intervention. [9]

Affidavit of Service by Mail Attached. [10]

[Endorsed]: Filed June 12, 1957.

[Title of District Court and Cause.]

PRE-TRIAL CONFERENCE ORDER

Following pre-trial proceedings pursuant to Rule 16 of the Federal Rules of Civil Procedure and Local Rule 9 of this Court, It Is Ordered: [11]

I.

This is an action by plaintiff for an order enjoining defendant from collecting taxes and interest assessed against plaintiff as alleged transferee of the assets of Borin Art Products Corporation, an Illinois corporation. This is also an action by plaintiff in intervention for recovery from defendant in intervention of the said taxes. The pleadings are as follows:

1. An amended complaint filed by plaintiff;
2. An answer to amended complaint filed by defendant;
3. A complaint in intervention filed by plaintiff in intervention;

4. An answer to said complaint in intervention filed by defendant in intervention;
5. A supplement to the said amended complaint;
6. An answer to the said supplement.

II.

Federal jurisdiction is invoked upon the following grounds:

1. Plaintiff, who is also defendant in intervention, is an individual now residing at Los Angeles, California.
2. Defendant is the District Director of Internal Revenue for the Sixth District of California.
3. The action involves federal taxes within the scope of 28 USC, Section 1340.

III.

The following facts are admitted and require no proof:

1. This is an action by plaintiff for an order enjoining defendant from collecting taxes and interest assessed against plaintiff as alleged transferee of the assets of Borin Art Products Corporation, an Illinois corporation, and an action by plaintiff in intervention for recovery of said taxes.
2. Plaintiff, who is also defendant in intervention, [12] is an individual residing at Los Angeles, California.

3. Defendant is District Director of Internal Revenue for the Sixth District of California.

4. The taxes involved are corporation income and excess profits taxes of the said Borin Art Products Corporation for the year 1942 and the period January 1st to April 30th, 1943, in the net amount for both years of \$10,705.69.

5. On April 30, 1943 the said corporation transferred all of its assets, subject to all of its liabilities, to an entity known as Borin Art Products Company.

6. After said date the said corporation had no assets or anything of value.

7. Prior to said transfer of assets the shareholders of said corporation transferred their stock in said corporation to the said entity, Borin Art Products Company, and at the time of said transfer of assets the said entity was the sole shareholder of said corporation.

8. No notice of deficiency in respect to said taxes was ever sent to plaintiff.

9. The said taxes were assessed on June 15, 1951.

10. Under a statement issued by the Treasury Department to plaintiff under date of March 30, 1950 and proposing the assessment of the said sum of \$10,705.69, it was alleged that assets were received by plaintiff from the said corporation as transferee in that amount.

11. The United States had previously assessed against plaintiff as alleged transferee of the said corporation because of the distribution of said corporation income and excess profits taxes for the years 1940 and 1941 in the total amount of \$12,000.00. The said amounts were subsequently paid in full by persons other than plaintiff.

12. By letter dated March 30, 1950, the Treasury Department advised plaintiff of an overassessment determined for [13] the years 1944, 1945, and 1946 in the individual income taxes of plaintiff, in the respective amounts of \$14,926.62, \$24,596.39, and \$200.00. The said letter stated that no return was filed for 1946. The said letter also stated, as a reason for the overassessment, that the income taxed to plaintiff as income from a partnership, Borin Art Products Company, was not her income but that of her husband, Nathan Borin.

13. No portion of the amount so assessed against plaintiff as said transferee has been paid by plaintiff.

IV.

The reservations as to the facts cited in Paragraph III above are as follows:

Defendant and plaintiff in intervention question the materiality of item 11.

V.

The following facts, though not admitted, are not to be contested at the trial by evidence to the contrary: None.

VI.

The following issues of fact, and no others, remain to be litigated upon the trial:

1. Whether plaintiff was ever in fact a shareholder in said Borin Art Products Corporation;
2. Whether plaintiff was ever in fact a member of said entity, Borin Art Products Company;
3. Whether said entity, Borin Art Products Company, was a bona fide limited partnership or was, on the contrary, a sham;
4. Whether said entity was the mere alter ego of Nathan Borin, the then husband of plaintiff;
5. Whether plaintiff ever received any money, property, or other thing of value from said corporation as transferee, after the said taxes had become a liability of said [14] corporation.

VII.

The exhibits to be offered at the trial, together with a statement of all admissions by and all issues between the parties with respect thereto, are as follows:

A. By defendant and plaintiff in intervention:

1. Form 874—"Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment". (Plaintiff will contend that her signature on the said document was obtained by representation that the said form was merely a consent extending the period of limita-

tion on assessment from June 30, 1951 to June 30, 1952.)

2. Plaintiff's federal tax returns for the years 1944 and 1945. (Plaintiff will contend that the said return for the year 1944 was signed by her without knowledge of any representation to be made therein relating to an interest in a partnership, and that what purports to be her signature on said return for the year 1945 is a forgery and that she had no knowledge of said return.)

3. Copy of Complaint in Chancery for Dissolution filed by plaintiff (formerly Claire Borin) in the Circuit Court of Cook County, Docket No. 46 C 1685. (Plaintiff will contend that any representations contained in said complaint relating to an interest in a partnership were made in erroneous reliance on contentions theretofore made by plaintiff in intervention. Plaintiff will also show that said complaint was dismissed and that she received nothing by virtue thereof.)

4. Copy of Answer to Nathan Borin (deceased husband of plaintiff) filed on or about June 10, 1946, to Complaint referred to in No. 3 above. (Plaintiff will contend that any such representations made in this exhibit were made for tax purposes.)

5. Copy of Amended and Supplemental Complaint for [15] Divorce filed by plaintiff (formerly Claire Borin) in the Superior Court of Cook County, Docket No. 45 S 5229. (Plaintiff will con-

tend that any representations contained in said complaint relating to an interest in a partnership were made in erroneous reliance on contentions theretofore made by plaintiff in intervention. Plaintiff will also show that she received nothing by virtue of said representations.)

6. Copy of Second Amended and Supplemental Complaint for Divorce in matter referred to in No. 5 above. (Plaintiff will contend that any representations contained in said complaint relating to an interest in a partnership were made in erroneous reliance on contentions theretofore made by plaintiff in intervention. Plaintiff will also show that she received nothing by virtue of said representations.)

7. Copy of Complaint in Equity filed in the Superior Court of Cook County, Docket No. 49 S 2195, by plaintiff (formerly Claire Borin). (Plaintiff will contend that any representations contained in said complaint relating to an interest in a partnership were made in erroneous reliance on contentions theretofore made by plaintiff in intervention. Plaintiff will also show that she received nothing by virtue of said representations.)

8. Form 899—"Certificate of Assessments and Payments".

9. Form 668—"Notice of Federal Tax Lien Under Internal Revenue Laws" filed as document No. 2579, November 7, 1956, in Los Angeles County Recorder's Office.

10. Copy of an agreement dated April 15, 1943 involving shares in said Borin Art Products Corporation, together with copies of all of the checks executed, delivered, or endorsed under said agreement.

B. By plaintiff and defendant in intervention:

1. Exemplified copy of an executed copy of a document [16] entitled "Agreement", dated May 1, 1943, and relating to the formation of the said entity, Borin Art Products Company. (The purpose of this exhibit is to show that what purports to be the signature of plaintiff on said document is a forgery.)

2. If item 10 under exhibits to be offered by defendant and plaintiff in intervention is not offered by them, plaintiff may ask that it be introduced as an exhibit of plaintiff.

VIII.

The following issues of law, and no others, remain to be litigated upon the trial:

1. Whether collection of said taxes by distraint is now barred by the statute of limitations. (Plaintiff will contend that this issue in itself disposes of the injunction action in favor of plaintiff and reduces this proceeding to the action in intervention.)

2. Whether plaintiff is liable for said taxes as a transferee pursuant to section 311 of I.R.C. 1939.

IX.

The foregoing admissions having been made by the parties, and the parties having specified the foregoing issues of fact and law remaining to be litigated, this order shall supplement the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice.

Sept. 23, 1957.

/s/ HARRY C. WESTOVER,
United States District Judge.

Approved As to Form and Content:

/s/ GEORGE T. ALTMAN,

Attorneys for Plaintiff and Defendant in Intervention.

/s/ JOHN G. MESSER,
Attorney for Defendant and Plaintiff in Intervention. [17]

[Endorsed]: Filed September 23, 1957.

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated, by and between the parties hereto, as follows:

1. The period for collection of the taxes involved here by levy or distraint expired on June 15, 1957, and collection thereof, other than by the proceeding in intervention filed herein, is now barred by the statute of limitations.

2. Because of the facts stated in the foregoing paragraph, the injunction action herein is now moot and this proceeding is reduced to the action in intervention. [18]

3. Plaintiff herein, being defendant in intervention, will present no evidence intended to show that her signature on a waiver of restrictions on assessment was obtained by fraud of an agent of the government.

Dated: November 26, 1957.

LAUGHLIN E. WATERS,

U. S. Attorney,

EDWARD R. McHALE,

Asst. U. S. Attorney,

Chief, Tax Division,

JOHN G. MESSER,

Asst. U. S. Attorney,

/s/ JOHN G. MESSER,

Attorneys for Defendant and Plaintiff in Intervention.

/s/ GEORGE T. ALTMAN,

Attorneys for Plaintiff and Defendant in Intervention.

It Is So Ordered this 27th day of November, 1957.

/s/ HARRY C. WESTOVER,

Judge. [19]

[Endorsed]: Filed November 27, 1957.

[Title of District Court and Cause.]

NOTICE OF MOTION AND MOTION IN
RESPECT OF CERTAIN EXHIBITS

To the Defendant, Robert A. Riddell, the United States, Plaintiff In Intervention, and Their Attorneys:

You Will Please Take Notice that plaintiff will call for hearing her motion, stated below, to reopen the record for the purpose of making motions in respect to defendant's exhibit U and plaintiff's exhibit 1, before the Honorable Harry C. Westover, United States District Judge, in Courtroom No. 5, United States Post Office and Courthouse Building, 312 North Spring Street, Los [20] Angeles 12, California, at 10:00 a.m., Monday, February 3, 1958, or as soon thereafter as counsel may be heard.

I.

Plaintiff moves the court to reopen the record, upon such terms as the court may prescribe, for the purpose of enabling her to make the following motions in respect to the exhibits indicated:

A.

Plaintiff moves the court to vacate the admission in evidence of a certain abstract of record, being defendant's exhibit U, and to allow objections thereto.

Plaintiff's counsel came away with the definite belief that he had made this motion during the course of trial and that it had been denied. The offi-

cial report, however, does not show such a motion and it may well be that plaintiff's counsel through inadvertence omitted to make it. It was his intention to make it at the point indicated by page 151, line 14, of the official transcript, and it was his purpose to make it on the ground stated at page 150, lines 4 to 10.

That exhibit is not one of those listed in the pre-trial conference order. While the court, at page 150, lines 19 to 23, indicated that it would treat that exhibit as irrelevant in any case, the court's finding, at page 182, lines 18-23, that Mrs. Borin owned 80 shares of stock of Borin Art Products Corporation may have been based upon that exhibit, in view of the direct testimony to the contrary on page 26, lines 8 to 10.

Also, the reason given by the court in indicating that the defendant's exhibit U was irrelevant, that is, that it involved divorce proceedings (page 150, lines 19 to 23), and therefore had nothing to do with the case, is the same reason for which the court denied admission into evidence of plaintiff's exhibit 12 for identification, which was offered immediately afterward and related [21] to the same proceeding as defendant's exhibit U. (See page 152, line 20, to page 153, line 7.)

B.

Plaintiff further moves the court for leave to state for the record the limited purpose for which she offered exhibit 1, being a copy of a certain agreement.

That plaintiff's exhibit 1 was intended to be filed for a limited purpose is specifically shown in the pre-trial conference order, page 7, lines 3-5. Plaintiff offered that document only for the purpose of showing the deliberate falsification of her signature thereon, and also the terms of the purported agreement, but not for the purpose of establishing the truth of any of the recitals contained therein. It was, of course, not plaintiff's purpose to contradict her own direct testimony (page 26, lines 8 to 10) that she never owned any stock in Borin Art Products Corporation.

II.

In accordance with the permission granted by the court plaintiff will file before the date for hearing this motion her proposed findings and points and authorities, as allowed by the court, page 190, lines 22 to 25, of the transcript.

Respectfully submitted,

/s/ GEORGE T. ALTMAN,
Attorney for Plaintiff. [22]

Affidavit of George T. Altman

County of Los Angeles,
State of California—ss.

George T. Altman, being duly sworn, deposes and says:

That the facts stated in paragraphs A and B of the foregoing Motion in Respect of Certain Exhibits are true and correct.

/s/ GEORGE T. ALTMAN.

Subscribed and sworn to before me this 23rd day of January, 1958.

[Seal] /s/ DOROTHY B. CLOVER,
Notary Public in and for said
County and State. [23]

Memorandum of Points and Authorities in Support
of Motion in Respect of Certain Exhibits.

Under F.R.C.P., Rule 60(b)(1), the corrections requested here may be made even after judgment. This is all the more true here since this is a proceeding in equity under the trust fund doctrine, *Phillips v. Commissioner*, 283 U.S. 589, *Phillips-Jones Corporation, et al., v. Parmely*, 302 U.S. 233, and defendant here has admitted that this is a harsh case (T. 100, lines 1 and 2). See also F.R.C.P., Rule 59; *Partridge v. Presley*, 88 App. D.C. 298, 189 F. 2d 645, cert. denied 342 U.S. 850.

The ground for objection to admission of defendant's exhibit U as stated in the transcript (page 150, lines 4 to 10) is clearly within the hearsay rule. See 1 *Jones on Evidence*, sec. 297, page 559, and sec. 298, page 563. [24]

Acknowledgment of Receipt of Copy Attached. [25]

[Endorsed]: Filed January 24, 1958.

[Title of District Court and Cause.]

FINDINGS PROPOSED BY PLAINTIFF,
DEFENDENT IN INTERVENTION

1. This is an action by plaintiff for an order enjoining defendant from collecting taxes and interest assessed against plaintiff as alleged transferee of the assets of Borin Art Products Corporation, an Illinois corporation, and an action by plaintiff in intervention for recovery of said taxes. [Pre-trial conference order, par. III(1)].

2. The period for collection of taxes involved here by levy or distraint expired on June 15, 1957, and collection thereof other than by the proceeding in intervention is now barred by the [26] statute of limitations [Stipulation, par. 1].

3. Because of the facts stated in the foregoing paragraph, the injunction action herein is now moot and this proceeding is reduced to the action in intervention. [Stipulation, par. 2].

4. Plaintiff is an individual residing at Los Angeles, California. [Pre-trial conference order, par. III(2)]. She was married to Nathan Borin in 1933 [T. 25, lines 18-20] and divorced from him in 1949. [T. 33, lines 3-6].

5. Defendant is District Director of Internal Revenue for the Sixth District of California. [Pre-trial conference order, par. III(3)].

6. The taxes involved are income and excess profits taxes of the said Borin Art Products Corpo-

ration for the year 1942 and the period January 1 to April 30, 1943. [Pre-trial conference order, par. III(4)].

7. The total amount of such taxes asserted against the said corporation for the said periods is not shown by evidence in the record; of said amount, whatever it is, the sum of \$10,705.69 was thereafter assessed against plaintiff on the ground that assets in that amount were received by plaintiff from the said corporation as transferee. [Pre-trial conference order, pars. III(4), (10)].

8. On April 30, 1943, the said corporation was terminated and liquidated and the assets of the corporation, subject to its liabilities, were transferred to a purported partnership known as Borin Art Products Company. [Pre-trial conference order, par. III(5); T. 182, line 24 to T. 183, line 2].

9. Prior to said transfer of assets the shareholders of the corporation transferred their stock therein to the said Borin Art Products Company and at the time of said transfer of assets the Borin Art Products Company was the sole shareholder of the corporation. [Pre-trial conference order, par. III(7)]. [27]

10. Under the purported organizing instrument of said Borin Art Products Company, entitled "Agreement," hereinafter referred to as the "partnership agreement," Nathan Borin was named as sole general partner and sixteen other individuals, including plaintiff, as limited partners. [Plaintiff's

exhibit 1, pp. 3-4]. The amount contributed by plaintiff was therein shown as "10% of company [Borin Art Products Corporation] assets of the agreed value of \$12,000." [Plaintiff's exhibit 1, pp. 4 and 5]. The corresponding "agreed" value of the total assets of said corporation on liquidation was 10 times that amount or \$120,000.00.

11. Subsequent to the dissolution of said corporation and the distribution of its assets, additional liabilities were found and determined as follows: income and excess profits taxes determined June 3, 1948, for the years 1940 and 1941 in a total amount of \$80,019.10 [Plaintiff's exhibit 2]; income and excess profits taxes for the year 1942 and the period January 1 to April 30, 1943, in an amount in excess of \$40,000.00. [The complaint in intervention, par. V, alleges that a total of \$108,287.99 was assessed against the corporation for the periods 1942 and January 1 to April 30, 1943. While there was no proof offered by the government on this, we assume that the amount in any event was in excess of \$40,000.00].

12. Assuming the "agreed" value shown in par. 10 above is the actual value, the net value of the corporation's assets as of the date of liquidation and distribution and after deduction of all liabilities including federal taxes was less than zero. [Based on paragraphs 10 and 11 above].

13. If plaintiff in fact received on the distribution of said corporation's assets a 10% interest in said Borin Art Products Company, said interest

was received by her subject to a lien for any debts due Nathan Borin, including the "purchase" price of the purported like interest in the corporation surrendered. [Plaintiff's [28] exhibit 1, par. 20]. Also, such interest in Borin Art Products Company was terminable by Nathan Borin at will. [Plaintiff's exhibit 1, pars. 5, 21].

14. The value of such interest, if any, received by her was less than zero. [Pars. 12 and 13 above].

15. No contrary evidence of the value of such interest, if any, was introduced by defendant. [T. 96; on the question of burden of proof see pars. A and K of Argument filed concurrently herewith].

16. No evidence was introduced to show whether or not the sums assessed against plaintiff as transferee for the periods involved here were not also assessed against others. Nor was any evidence introduced to show what the corporate taxes involved amounted to, or whether or not any part of such taxes was in fact unpaid. [For the importance of this paragraph see par. B of Argument filed concurrently herewith].

17. The United States had previously assessed against plaintiff, as alleged transferee of the said corporation, income and excess profits taxes for the years 1940 and 1941 in the total amount of \$12,000.00. The said amount was subsequently paid in full by persons other than plaintiff. [Pre-trial conference order, par. III(11); plaintiff's exhibit 3; see also par. C of Argument filed concurrently herewith].

18. Under the partnership agreement of said Borin Art Products Company it was provided, inter alia, as follows:

“(5) The term for which the partnership is to exist is the period of one year commencing the 1st day of May 1943 and ending April 30, 1944, and thereafter from year to year unless at least six (6) calendar months before April 30th of any year, General Partner [Nathan Borin] shall have delivered to the office of the partnership a written notice that he desires to terminate the partnership [29] at the close of business on April 30th of the succeeding year, in which event the partnership shall terminate at the time so designated.” [Plaintiff’s exhibit 1, p. 4, par. 5].

“(8) The time when the contribution of the Limited Partners who have made contribution is to be returned, is at the termination of said partnership. [Plaintiff’s exhibit 1, pp. 6-7, par. 8].

“(20) It is further understood and agreed that in any instance where any Limited Partner has become indebted to the General Partner by reason of the purchase of stock of Borin Art Products Corporation, or for any other reason, the said General Partner shall have a lien upon any and all profits payable to the said Limited Partner from said partnership until the sum due said General Partner from said Limited Partner or partners has been paid him.” [Plaintiff’s exhibit 1, pp. 9-10, par. 20].

“(21) In the event that employment by the part-

nership of any of the Limited Partners is terminated for any reason, with or without cause, the partnership shall thereafter have a continuing option and right to re-purchase said Limited Partner's interest in said partnership. In the event said partnership elects to re-purchase the interest of such Limited Partner at any time thereafter, it shall pay therefor the book value thereof as determined by the last previous audit prior to such election. The payment therefor shall be in equal installments extending over a period of eighteen (18) months from the time of such election." [Plaintiff's exhibit 1, p. 10, par. 21].

19. Plaintiff in fact never was an employee of said partnership and never rendered any services to said partnership. [30] [T. 167, lines 14-16].

20. Plaintiff never owned any stock in the Borin Art Products Corporation. [T. 26, lines 8-10; as to defendant's exhibits see pars. D through J of Argument filed concurrently herewith]. She never attended a meeting of the Board of Directors or a meeting of the stockholders, nor received any dividends from the corporation. [T. 26, lines 11-20]. She did not know that the corporation was liquidated, nor did she know that the partnership was formed. [T. 26, line 21, to T. 27, line 4].

21. Plaintiff did not sign the partnership agreement. [T. 183, lines 3-4]. What purports to be her signature on the partnership agreement was an attempt by someone else to copy her signature. [T. 10, line 19 to T. 11, line 1]. Plaintiff never

authorized anyone to sign the partnership agreement for her. [T. 118, lines 18 to 21].

22. Plaintiff has had no business experience and does not know anything about business practices. [T. 120, lines 2 to 4 and lines 10 and 11].

23. Nathan Borin treated the partnership as his own business. [T. 142, lines 22 to 25; see also par. L of Argument filed concurrently herewith]. The partnership was a dummy setup and it was Nathan Borin's purpose in doing this to evade taxes. [T. 160, lines 8 to 10]. By letter dated March 30, 1950, the Treasury Department advised plaintiff of an overassessment determined for the years 1944, 1945 and 1946 in the individual income taxes of plaintiff and as a reason therefor stated that the income taxed to plaintiff as income from a partnership Borin Art Products Company was not her income but that of her husband Nathan Borin. [Pre-trial conference order, par. III(12)]. None of the persons shown in the partnership agreement as limited partners received any actual distributions from the partnership. [T. 98, lines 9-10]. Nathan Borin charged vast sums of money which he expended in night [31] clubs, cabarets and other places of entertainment as partnership expenses, when, in fact, they were not; he charged numerous items involving hotel bills for his own personal pleasure to the partnership as expenses; he charged the purchase and operation of two Cadillac automobiles to the partnership as firm expenses, when, in fact, they were for his individual use; he gave lav-

ish gifts costing substantial sums of money to various persons and charged the same as an expense of the partnership, when, in truth and in fact, the gifts were made solely for his individual benefit and in numerous other ways he utilized the funds of the partnership for his own individual benefit. [Defendant's exhibit T, p. 4].

24. In February, 1945, plaintiff went to Florida and, because of intervening circumstances, she returned about a month later to file suit against her husband for divorce. [T. 28]. She found certain papers and documents in their home and took them to her attorney. Her attorney said that the papers indicated that she had some interest in her husband's business. Prior thereto she never knew anything about such an interest. [T. 29, lines 17 to 24]. Plaintiff herself never informed any of the attorneys whom she employed that she had an interest in the partnership. [T. 119, lines 14 to 16; T. 139, lines 17 to 20].

25. Plaintiff signed her personal income tax return for 1944 in blank; she did this at the request of a Mr. Locker, who at that time worked for Mr. Borin; when she signed it none of the writing was on the return; she returned the return either to Mr. Locker or Mr. Borin, and after she returned it with her signature the amounts shown in the return were inserted by parties unknown to her. [T. 45, line 16 to T. 46, line 7; T. 183, lines 5 to 11]. At that time she was always getting papers to sign and signed them without knowing what they meant. [T. 58, lines 12-14].

26. Plaintiff did not sign the income tax return filed in her name for 1945. Her name upon that return was placed there [32] by someone else without her authorization. She had no knowledge that the return was filed or what was contained in it. [T. 183, lines 12 to 17].

27. Plaintiff did not receive any money, property, or assets from the Borin Art Products Corporation at the time of its dissolution or from the partnership, Borin Art Products Company. [T. 54, lines 15-17; T. 54, line 25 to T. 55, line 2; T. 183, lines 18 to 21]. There was no benefit received and accepted by her. [T. 189, lines 19-21].

28. Borin Art Products Company was not a real, bona fide partnership. [T. 160, lines 8 to 10; see also par. L of Argument filed concurrently herewith].

29. Plaintiff was not, during the taxable year 1944, or 1945, or at any other time, a bona fide limited partner in said firm but was merely so designated for tax purposes by her then husband, Nathan Borin. [Defendant's exhibits W, X, and Y; see also pars. 23 and 28 above].

30. The equities here are in favor of plaintiff. [T. 190, line 21; see also par. J of Argument filed concurrently herewith]. [33]

Acknowledgment of Receipt of Copy Attached. [34]

[Endorsed]: Lodged January 30, 1958.

[Title of District Court and Cause.]

PLAINTIFF'S OBJECTIONS TO "FINDINGS
OF FACT, CONCLUSIONS OF LAW AND
JUDGMENT" LODGED BY DEFENDANT

In order to avoid confusion, we have in the following statement of objections adopted the government's nomenclature referring to Mrs. Morse as the defendant and the government as the intervenor. Also, the paragraph numbers are the government's. The transcript reference "T" refers to the original transcript of testimony taken at the trial on January 2 and 3, 1958. References to the proceeding had on February 3, 1958, are separately identified.

I.

No objection. [35]

II.

No objection.

III.

No objection provided two corrections are made. After the words "filed November 27, 1957," there should be inserted: "the statute having run on collection of said taxes by levy or distraint,". This is necessary to show the reason the suit for injunction became moot and the effect of its becoming moot.

A second correction is that there should be added to this paragraph the following sentence: "She was married to Nathan Borin in 1933 and divorced from him in 1949." The year of marriage is shown in the transcript at page 25, lines 18-20, and the year of divorce is shown at page 33, lines 3-6.

IV.

No objection.

V.

No objection.

VI.

There is no objection provided two corrections are made. As the first, there should be inserted after the word "corporation" in line 10 the following: " , subject to all of its liabilities, ". This is shown in the pre-trial conference order, page 3, lines 9-11.

The second correction is that the word "partnership" should be changed to read "purported partnership." We submit that a bona fide partnership did not exist. See the transcript, page 160, lines 8-10; see also par. 23 of "Findings Proposed by Plaintiff, Defendant in Intervention" and par. L of "Plaintiff's Argument on the Evidence and the Law," filed January 30, 1958.

VII.

This paragraph is wholly objected to. There is no evidence to support the conclusion that Claire Morse was the owner of 80 shares of stock of Borin Art Products Corporation. Mrs. [36] Morse testified directly, in reply to the court's question, that she never owned any stock in the corporation. [T. 26, lines 8-10]. Correspondingly, she never attended a meeting of the Board of Directors or a meeting of the stockholders, or received any dividends from the corporation. [T. 26, lines 11-20]. She did not even know that the corporation was liquidated, nor did she know that the partnership was formed. [T. 26, line 21, to T. 27, line 4]. The gov-

ernment has itself stated that stock may have been transferred into her name without her knowledge "as part of the scheme for dissolution of the corporation and creating the partnership." [Transcript of proceedings February 3, 1958, p. 2, lines 8-14]. This in itself proves that she never in fact owned any stock in the corporation. Precisely such mechanics were used in forming the partnership involved in *Commissioner v. Tower*, 327 U.S. 280, which case was explained and approved in *Commissioner v. Culbertson*, 337 U.S. 733.

VIII.

We make several objections to this paragraph. In the first place we submit for reasons stated above that the term "partnership" should read "purported partnership." In the second place, Mrs. Morse did not "receive" a 10% interest in the partnership. An accurate statement of the interest which was evenly purportedly created in her by the partnership agreement requires pars. 10 through 15 and par. 18 of "Findings Proposed by Plaintiff, Defendant in Intervention," filed January 30, 1958.

Assuming that Mrs. Morse did have such an interest it is clear also that she never agreed to a value of \$12,000.00 and of course there is no agreement between the parties to this proceeding, nor any evidence of any kind, that the interest, if it did exist, had any such value, or any value at all.

IX.

The word "directly" in line 24 should be stricken and also the entire portion beginning in line 25

with the word "but." [37] As noted above in reference to par. VII, the government itself has now indicated in this proceeding that the purported receipt of 80 shares and exchange of such shares for an interest in the partnership were mere forms carried out without Mrs. Morse's knowledge as part of a "scheme," also unknown to her, whereby the corporation was dissolved and the so-called partnership formed.

X.

No objection.

XI.

We submit that this paragraph should be entirely stricken. In the first place, these "agreements" are not real agreements. The recited consideration from the Commissioner, not to issue a deficiency notice to and assess the corporation, is illusory since the corporation had no assets; and the recited admission by the taxpayer, that she is a transferee, is meaningless since it is expressly limited to the extent of her liability as transferee, the very liability here in question. Furthermore, contrary to the final sentence of this paragraph, the Commissioner neither accepted nor relied on these "agreements," for, as shown in intervenor's par. V, he did in fact assess the corporation. We submit therefore that this paragraph of the findings lodged by intervenor should be stricken.

XII.

We object to this paragraph for the reason that there is a failure to disclose the entire wording of the exhibit. The exhibit reads at the top:

“Pursuant to the provisions of Section 272(d) of the Internal Revenue Code and/or the corresponding provisions of prior internal revenue laws, the restrictions provided in Section 272(a) of the Internal Revenue Code and/or the corresponding provisions of prior internal revenue laws as amended are hereby waived and consent is given to the assessment and collection of the following deficiency [38] or deficiencies in tax:”.

It is clear from the sections referred to that the document is nothing but a waiver of the right to test the validity of the tax in the Tax Court before payment. This is more clearly shown by the first paragraph of the note at the bottom of the exhibit reading as follows:

“The execution and filing of this waiver at the address shown in the accompanying letter will expedite the adjustment of your tax liability as indicated above. It is not, however, a final closing agreement under section 3760 of the Internal Revenue Code, and does not, therefore, preclude the assertion of a further deficiency in the manner provided by law should it subsequently be determined that additional tax is due, nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.”

We, of course, have no objection to a paragraph quoting the exhibit verbatim even though, as shown at T. 179, lines 9-13, defendant, Mrs. Morse, was not

allowed to introduce a copy of a letter showing that the document was misrepresented to her as a mere extension of time.

XIII.

We object to the last sentence of this paragraph, that is, the sentence which reads "No part of any of said unpaid balances has been paid." We agree that no part of it was paid by Mrs. Morse. We agree also that no payment was made against this particular transferee assessment. There is no evidence, however, that the deficiencies in taxes of the corporation, upon the basis of which the transferee assessment was made, have not in fact been paid in full.

XIV.

No objection. [39]

XV.

No objection.

XVI.

We object to the entire portion beginning in line 23 with the words "but subsequent." We submit that there is no evidence to support that portion. There is, indeed, no evidence that she had ever read the partnership agreement or knew its contents.

If reliance is placed upon exhibit T we submit that the entire document and not just a part of it should have been brought into the record.

Moreover, the document on its face shows that the purported partnership was a sham. See the following wording in that document on page 4:

"Nathan Borin charged vast sums of money

which he expended in night clubs, cabarets and other places of entertainment as partnership expenses, when, in fact, they were not; he charged numerous items involving hotel bills for his own personal pleasure to the partnership as expenses; he charged the purchase and operation of two Cadillac automobiles to the partnership as firm expenses, when, in fact, they were for his individual use; he gave lavish gifts costing substantial sums of money to various persons and charged the same as an expense of the partnership, when, in truth and in fact, the gifts were made solely for his individual benefit and in numerous other ways he utilized the funds of the partnership for his own individual benefit.” (Emphasis added.)

That under such circumstances a partnership is a sham, see par. L of “Plaintiff’s Argument on the Evidence and the Law,” filed January 30, 1958.

Furthermore, neither exhibit T nor anything else in the record shows that Mrs. Morse “recognized and ratified the partnership [40] agreement,” as set forth in intervener’s proposed finding XVI. Ratification cannot be asserted against a person unless it is shown that he had foreknowledge of all the material facts, and there is no such showing here.

“A ratification can only arise from act of the mind, the intent of the party to ratify, knowing all the facts and circumstances connected with the transaction.” *Stevenson v. Dowie*, 3 Ill. C.C. 135, 200; 8 Ill. Digest 128. “A principal is not bound by a ratification of an unauthorized act of his agent

unless he had previous knowledge of all the material facts." *Hildebrand v. Beck*, (1925) 196 Cal. 141, 148.

To the same effect, *Tidewater Oil Company v. Commissioner*, 29 B.T.A. 1208, 1221; *Bigelow on Estoppel*, 6th Edition, 1913, at p. 493; *Schutz v. Jordan*, 141 U.S. 231, 35 L. Ed. 705, 11 S. Ct. 906.

Moreover, ratification, even as so defined, is not sufficient here. What must be shown is estoppel. In *Tidewater Oil Company v. Commissioner*, *supra*, it was stated, at pp. 1221-1222:

"The respondent [the Commissioner] has not established as a fact in this case a ratification, an acquiescence, an affirmance, or an acceptance of benefits by the petitioner, but, even if he had, the mere fact would be inadequate for his purpose without, in addition, an estoppel otherwise incomplete."

The *Tidewater Oil* case has been cited with approval more than 30 times, including many times on the very point here involved, such as in *Pancoast Hotel Company v. Commissioner*, 2 T.C. 362, 370, and most recently in *Crosley Corporation v. U.S.* (C.A. 6, 1956) 229 F. 2d 372.

This rule of the *Tidewater Oil* case is all the more pertinent here since the document allegedly ratified here was a forged document, insofar as Mrs. Morse was concerned. [41]

"At all events a principal may be liable on the forged instrument if his promise to assume the con-

tract induces the other party to change his position to his prejudice; the rule in such cases rests, however, on the doctrine of estoppel rather than that of ratification." 2 C.J.S. 1076, citing cases from numerous jurisdictions.

This is still more true here because the act of ratification relied on is a pleading. A pleading itself, even though under oath, cannot ratify, much less operate as an estoppel. It was stated in *Parkinson v. California Co.* (C.A. 10, 1956), 233 F. 2d 432, at 438:

"Be that as it may, we must reject the theory that the pleading of a claim under oath, apart from equitable considerations which may be deemed in reason to operate as an estoppel by conduct, irrevocably freezes the contentions of the pleader so that under no circumstances may he alter his view in that, or another, case, or assert an inconsistent position. This would not be in keeping with the spirit of Federal Rules of Civil Procedure, rule 8(e)(2), 28 U.S.C.A. would be out of harmony with the great weight of authority independent of that rule, and would discourage the determination of cases on the basis of the true facts as they might be established ultimately. Even in the case of false statements in pleadings, public policy can be vindicated otherwise—and more practicably and fairly in most instances—than through suppression of truth in the future. *Tracy Loan & Trust Co. v. Openshaw Inv. Co.*, 102 Utah 509, 132 F. 2d 388. The prevailing rule, more in accord with reason, is stated under

the principal section heading, 31 C.J.S. Estoppel, Sec. 121 p. 386, preceding the minority view quoted by the defendants. See also Sinclair Refining Co. [42] v. Jenkins Petroleum Process Co., 1 Cir., 1938, 99 F. 2d 9, certiorari denied 305 U.S. 659, 59 S. Ct. 362, 83 L. Ed. 427."

To the same effect under Illinois Law, 18 Ill. Law and Practice 64, citing Sholl v. German Coal Co., 28 N.E. 748, 139 Ill. 21; Thomas V. Danglus, 105 N.E. 2d 129, 346 Ill. App. 277; Siegel, Cooper & Co. v. Colby, 52 N.E. 917, 176 Ill. 210.

What must be shown then is estoppel, not ratification. As to what estoppel requires we refer to and incorporate by reference the legal contentions contained in "Plaintiff's Argument on the Evidence and the Law," filed January 30, 1958, paragraph J. Clearly there is no estoppel here. There were no benefits accepted by Mrs. Morse, nor any reliance by intervener to its detriment. The evidence is to the very contrary. On March 30, 1950, the government itself determined that Mrs. Morse had no partnership interest in Borin Art Products Company. [Pre-trial conference order, p. 3, line 31 to p. 4, line 7].

XVII.

We object to this paragraph. In the first place, if this complaint was indeed filed in a proceeding in Illinois then exhibit T represents on its face only a part of the document filed. There were attached to the document certain exhibits which were not introduced here.

It is clear here also that Mrs. Morse never received anything from any of the claims alleged in that document. This paragraph of intervener's proposed findings refers in the last sentence thereof to allegations of an interest in certain claims and causes of action against certain insurance companies. The record clearly shows that Mrs. Morse never received any part of any amounts paid by those insurance companies or any part of any other money, property, or rights of the purported partnership, Borin Art Products Company. [43]

Also we submit that this paragraph XVII is immaterial and irrelevant for the reason that under the law of Illinois a complaint is intended merely to frame the issues and does not bind the pleader. See paragraph E of "Plaintiff's Argument on the Evidence and the Law," filed January 30, 1958; also the argument above under par. XVI. Also, the quotation in this paragraph XVII does not disclose the statements on page 4 of the document quoted which on their face show that the purported partnership was nothing but a sham. We refer to the part quoted herein under par. XVI above.

XVIII.

The second sentence of this paragraph should be revised to read: "The amounts thereon were thereafter inserted by parties unknown to defendant or this court." The witness, in reference to the 1944 return, stated at p. 104 of the transcript, lines 1-3, inclusive, that she never knew anything about it.

We object also to the words "the defendant's dis-

tributable share” in the third sentence of this paragraph. We submit again that bona fide she was not a partner and therefore had no distributable share. The words “the defendant’s distributable share” should be changed to read “a share.”

XIX.

No objection.

XX.

We object to the part beginning on page 8, line 2, with the words “nor did she” and ending with the words “of the partnership.” It incorrectly assumes that she was a partner and had a distributable share.

XXI.

We object to this paragraph for the same reason that we objected to par. VIII. In addition it is clear that liability of a transferee is limited to the actual value of the assets received by him from the transferor. *Phillips v. Commissioner*, 283 U.S. 589; [44] *Phillips-Jones Corporation, et al. v. Parmely*, 302 U.S. 233. The value which was agreed upon by those who actually signed the partnership agreement, and without defendant’s knowledge, is certainly no criterion of the actual value of the interest. Besides, the so-called agreed value was the value of 10% of the corporation’s assets and not necessarily the value of the purported limited partnership interest indicated in the partnership agreement under the name of Claire Borin.

XXII.

This paragraph is not accurate. Prior to the time

defendant filed suit for divorce, that is, March 1945, she signed papers at the request of her husband, Mr. Borin, or persons working for him. [T. 46, lines 1-4].

XXIII.

We object to this paragraph. F.R.C.P., Rule 52(a) expressly requires that "the court shall find the facts specially and state separately its conclusions of law thereon." We have not waived that requirement.

Conclusions of Law

I.

No objection.

II.

We of course object to this paragraph. The evidence is clear that defendant received nothing and therefore cannot be liable. Even if it were assumed that she received a paper interest of some kind the value thereof was nil. See pars. 8 through 15 of "Findings Proposed by Plaintiff, Defendant in Intervention," lodged January 30, 1958. In the third place, the partnership was the transferee, and defendant, even if she was a partner, had no right in fact to claim anything from the partnership. See pars. K and M of "Plaintiff's Argument on the Evidence and the Law," filed [45] January 30, 1958.

III.

We object to this paragraph. See statement above in respect to paragraph XVI of the findings.

IV.

We object to this paragraph for the same reason

that we objected to pars. VIII and XXI of the findings.

V.

We of course object to this conclusion as wholly unsustained by the record.

VI.

We do not agree with this paragraph. However, we make no objection to it since it is not contradicted by the admitted evidence.

VII.

We object to this for the same reason that we objected to par. XXIII of the findings.

Judgment

1. Paragraph (1) is erroneous. All that may be said there is that the suit for injunction became moot for the reason that the statute had run against defendant Robert A. Riddell in respect to collection by levy or distraint. The complaint for injunction may be dismissed, but only as moot for the reason given.

2. We submit, of course, that par. (2) is not sustained by the record.

3. We object to par. (3) for the same reason.

/s/ GEORGE T. ALTMAN,
Attorney for plaintiff and defendant in interven-
tion. [46]

Acknowledgment of Receipt of Copy At-
tached. [47]

[Endorsed]: Filed February 13, 1958.

United States District Court, Southern District
of California, Central Division

No. 20638-HW Civil

CLAIRE B. MORSE, Plaintiff,

vs.

ROBERT A. RIDDELL, District Director of
Internal Revenue, Defendant.

UNITED STATES OF AMERICA,
Plaintiff in Intervention,

vs.

CLAIRE B. MORSE,
Defendant in Intervention.

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND JUDGMENT

This cause came for trial on January 2, 1958, before the Honorable Harry C. Westover, Judge, presiding, without the intervention of a jury. Plaintiff and defendant in intervention was represented by her counsel, George T. Altman, and defendant, Robert A. Riddell, and plaintiff in intervention, United States of America, were represented by their counsel, Laughlin E. Waters, United States Attorney, Southern District of California; Edward R. McHale, Assistant United States Attorney, Chief, Tax Division; John G. Messer, Assistant United States Attorney; and Eugene Harpole, Spe-

cial Attorney, Internal Revenue Service. The Court having heard and considered all the evidence, stipulations of facts, [48] exhibits and memoranda of counsel, makes the following findings of fact and conclusions of law:

Findings of Fact

I.

The plaintiff, Claire B. Morse, is a citizen of the United States and a resident of the County of Los Angeles, State of California.

II.

This is an action by plaintiff, Claire B. Morse, for an order enjoining defendant from the collection of taxes and interest assessed against said plaintiff and defendant in intervention as transferee of the assets of Borin Art Products Corporation, an Illinois corporation. The plaintiff in intervention, United States of America, intervened in said action to recover said taxes from said Claire B. Morse.

III.

By stipulation of the parties, filed November 27, 1957, the suit for injunction became moot prior to trial so that this proceeding was reduced to a trial of the issues raised by the complaint in intervention and the answer thereto. Plaintiff and defendant in intervention, Claire B. Morse, will hereinafter be referred to as defendant, and plaintiff in intervention, United States of America, will hereinafter be referred to as intervener. Said defendant has also been known as Claire Borin, Claire B. Borin, Claire Buchman, and Claire B. Buchman.

IV.

The complaint in intervention was authorized by the Commissioner of Internal Revenue, an authorized delegate of the Secretary of the Treasury, and was brought under the direction of the Attorney General of the United States.

V.

The Commissioner of Internal Revenue made an assessment [49] against Borin Art Products Corporation, an Illinois corporation, of declared value excess profits tax and excess profits tax, penalties and interest, for the calendar year 1942 and for the period January 1, 1943 through April 30, 1943, in the amount of \$110,334.07 and overassessment in income tax in the amount of \$2,046.98. No part of said assessment was paid by said corporation.

VI.

On April 30, 1943, said Borin Art Products Corporation was dissolved and on or about said date, all the assets of said corporation were transferred to a partnership, Borin Art Products Company.

VII.

Prior to the dissolution of said corporation, defendant was owner of eighty (80) shares of stock of said Borin Art Products Corporation.

VIII.

Under partnership agreement dated May 1, 1943 (Exhibit 1), which created the partnership of Borin Art Products Company, defendant Claire B. Morse,

as one of the limited partners named therein, received a ten per cent (10%) interest in said partnership of an agreed value of \$12,000.00 as set forth in said agreement.

IX.

Upon the dissolution of the Borin Art Products Corporation, defendant did not receive directly any of the money, property or assets of said corporation, but received for her interest of eighty (80) shares in said corporation the ten per cent (10%) interest in the partnership, Borin Art Products Company, as hereinabove set forth.

X.

On various dates, timely within the periods of limitation, as extended, defendant executed consents fixing period of limitation upon assessment of liability at law or in equity for income and [50] profits tax against a transferee for the assessments hereinabove set forth against Borin Art Products Corporation, transferor, for the calendar year 1942 and the period January 1, 1943 through April 30, 1943. The last of said consents (Form 977, Exhibit O), dated December 4, 1947, extended said period of limitation to June 30, 1951.

XI.

On or about February 8, 1946, defendant executed a transferee agreement (Exhibit L) which was as follows:

“Transferee Agreement

Date February 8, 1946

In consideration of the Commissioner of Internal

Revenue not issuing a statutory notice of deficiency to and making an assessment against Borin Art Products Corporation, incorporated under the laws of the State of Illinois on September 15, 1932, the undersigned, Claire Borin, admits that he (or she) is a transferee of the assets of said Borin Art Products Corporation and assumes and agrees to pay the amount of any and all Federal income, excess-profits, or profits taxes finally determined or adjudged as due and payable by the Borin Art Products Corporation for the taxable year ended December 31, 1942, to the extent of her liability as transferee under the Internal Revenue Code.

The undersigned further agrees (1) not to contest or deny in court or otherwise liability as transferee, (2) in the absence of the prior written consent of the Commissioner, not to sell, transfer, or assign [51] without adequate consideration all or any substantial portion of his (or her) assets, (3) upon request of the Commissioner, to execute consents in writing extending the period of limitation for assessment.

Claire B. Borin,
Transferee”.

On or about February 8, 1946, defendant executed another transferee agreement (Exhibit M), similar in all respects to the one set forth above, except that it covered the taxable period January 1, 1943 to April 30, 1943 of the Borin Art Products Corporation. Both agreements were delivered to the Government which accepted said agreements and relied thereon.

XII.

On or about March 19, 1951, defendant executed Form 874 (Exhibit Z)—“Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment”.

Said form contained the following amounts and statement:

Deficiencies:

\$ 9,746.78	for the year 1942.
2,822.72	for the period January 1, 1943
—————	to April 30, 1943
<u>\$12,569.50</u>	

Overassessment:

\$ 1,490.02	for the year 1942.
373.79	for the period January 1, 1943
—————	to April 30, 1943
<u>\$ 1,863.81</u>	

“Represents undersigned’s liability as a transferee of assets of Borin Art Products Corporation, Transferor, for income and excess profits taxes due from said Borin Art Products Corporation, [52] Transferor.”

XIII.

On June 15, 1951, the Commissioner of Internal Revenue assessed against defendant, as transferee of the assets of Borin Art Products Corporation, deficiencies in taxes of said corporation in amounts as follows:

Taxable Period: Year 1942. Amount Assessed: \$11,177.24. Date of Assessment: June 15, 1951.

Dates, Notice and Demands: June 25, 1951. Unpaid Balance: \$11,177.24. Taxable Period: Jan. 1, 1943 thru Apr. 30, 1943. Amount Assessed: \$3,588.89. Date of Assessment: June 15, 1951. Dates, Notice and Demands: June 26, 1951. Unpaid Balance: \$3,588.89.

No part of any of said unpaid balances has been paid.

XIV.

The Complaint in intervention was filed on May 31, 1957.

XV.

Upon dissolution of Borin Art Products Corporation, as hereinabove set forth, said corporation was, and is, without property or things of value.

XVI.

The partnership agreement hereinabove referred to was not personally signed by defendant, nor did she authorize anyone to sign it for her at the time of its execution, but subsequent to the execution of the partnership agreement, she recognized and ratified the partnership agreement, and became obligated thereunder, as fully as though she had personally placed her signature thereon at the time of its execution.

XVII.

On or about February 8, 1946, defendant signed and verified a complaint (Exhibit T) for dissolution of the partnership, Borin Art Products Company. Said complaint was entitled State of Illinois, County of Cook, In The Circuit Court of Cook

County In [53] Chancery, Case No. 46 C 1685, Claire Borin vs. Nathan Borin, et al., "Complaint in Chancery For Dissolution Of Partnership, Accounting, And Other Relief," and contained the following allegation:

"(2) That on or about the first day of May, 1943, the defendant, Borin and the plaintiff and certain other individuals, * * * entered into a certain limited partnership agreement; that said agreement was duly recorded in the office of the Recorder of Deeds of Cook County, Illinois, * * *."

In said complaint, Claire Borin alleged a ten per cent (10%) interest in the claims and causes of action of the partnership, Borin Art Products Company, against certain insurance companies.

XVIII.

Defendant signed Form 1040, U.S. Individual Income Tax Return (Exhibit 6), for the year 1944 in blank. The amounts thereon were inserted by parties unknown to this Court. Said return reported only one item of income which was the defendant's distributable share, in the amount of \$32,239.42, of the partnership income of Borin Art Products Company. Tax liability shown on said return was \$14,925.62, which was paid.

XIX.

Defendant did not sign the Form 1040, U. S. Individual Income Tax Return (Exhibit 7), filed for the year 1945. Her name was placed thereon by someone else without her knowledge. She did not have knowledge of its contents nor did she have

knowledge of its filing at that time. Said return reported only one item of income which was a distributable share, in the amount of \$46,028.35, of the partnership income of Borin Art Products Company. Tax liability shown on said return was \$26,596.39, which was paid.

XX.

During the period May 1, 1943 to termination of the said partnership, no part of the moneys, property or other assets [54] belonging to the partnership, Borin Art Products Company, was distributed to defendant, nor did she withdraw any part of her distributable share of income as a partner of said partnership.

XXI.

The liability of defendant, Claire B. Morse, as transferee of the assets of Borin Art Products Corporation, to the plaintiff, United States of America, is limited to \$12,000.00, the agreed value of said defendant's ten per cent (10%) interest in the partnership, Borin Art Products Company, as set forth in the partnership agreement dated May 1, 1943.

XXII.

At all times pertinent herein, defendant negotiated with the Internal Revenue Service through her attorneys or accountants concerning all matters pertaining to the transferee liability herein involved and followed their advice and recommendations in signing all documents, agreements, extensions, waivers, etc., pertaining to said liability.

XXIII.

All conclusions of law which are or are deemed to be findings of fact are hereby found as facts and incorporated herein as findings of fact.

Conclusions of Law

I.

This Court has jurisdiction of the subject matter and of the parties hereto.

II.

The defendant has not sustained her burden of proving that she is not liable, at law or in equity, as transferee of the assets of Borin Art Products Corporation, for deficiencies in taxes assessed against said Corporation.

III.

By her actions subsequent to May 1, 1943, the date of [55] execution of the partnership agreement which created the partnership of Borin Art Products Company, defendant recognized, ratified and adopted said partnership agreement and thereby became obligated thereunder as fully as though she had personally placed her signature thereon at the time of its execution.

IV.

The liability of defendant as transferee of the assets of Borin Art Products Corporation is limited to \$12,000.00, the agreed value of her interest in the partnership, Borin Art Products Company.

V.

The intervener, United States of America, is enti-

tled to judgment against defendant, Claire B. Morse, in the assessed amount of \$10,705.69, with interest thereon at six per cent (6%) per annum from May 1, 1943, but limited to a total not to exceed \$12,000.00.

VI.

The assessment against defendant as transferee was validly made within the period of limitations as extended in writing by said defendant.

VII.

All findings of fact which are deemed to be conclusions of law are hereby incorporated in these conclusions of law.

Judgment

In accordance with the foregoing findings of fact and conclusions of law, it is hereby ordered, adjudged and decreed:

(1) That plaintiff, Claire B. Morse, take nothing by her suit for injunction against defendant, Robert A. Riddell, District Director of Internal Revenue, and that said complaint for injunction be, and it hereby is, dismissed with prejudice.

(2) That plaintiff in intervention, United States of America, do have and recover of and from the defendant in intervention, Claire B. Morse, under its Complaint in Intervention, the sum of \$12,000.00, plus interest as provided by law on said judgment. [56]

(3) That the defendant, Robert A. Riddell, and plaintiff, in intervention, United States of America,

have judgment for and shall recover from plaintiff, Claire B. Morse, the amount of their costs, to be taxed by the Clerk of this Court in the sum of \$26.00.

Dated: This 17th day of February, 1958.

/s/ HARRY C. WESTOVER,
United States District
Judge. [57]

Acknowledgment of Receipt of Copy Attached. [58]

[Endorsed]: Lodged February 5, 1958. Filed and Entered February 17, 1958.

[Title of District Court and Cause.]

ORDER DENYING MOTION IN RESPECT OF CERTAIN EXHIBITS

This matter having come before the Court on motion of the plaintiff and defendant in intervention in respect of certain exhibits, based on the motion, pleadings and memoranda of counsel, and the Court having duly considered the same, it is

Ordered, that said motion in respect of certain exhibits be and is hereby denied.

Dated: February 19, 1958.

/s/ HARRY C. WESTOVER,
United States District
Judge. [59]

Presented by: Laughlin E. Waters, United States Attorney, Edward R. McHale, Assistant United States Attorney, Chief, Tax Division, John G. Messer, Assistant United States Attorney, signed John G. Messer, Assistant United States Attorney. [60]

[Endorsed]: Filed February 19, 1958.

[Title of District Court and Cause.]

NOTICE OF MOTION AND MOTION
FOR NEW TRIAL

To the Defendant, Robert A. Riddell, the United States, Plaintiff in Intervention, and Their Attorneys:

You Will Please Take Notice that defendant in intervention will call for hearing her motion, stated below, for a new trial before the Honorable Harry C. Westover, United States District Judge, in Courtroom No. 5, United States Post Office and Courthouse Building, 312 North Spring Street, Los Angeles, California, at 10 A.M., Monday, March 3, 1958, or as soon thereafter as counsel may be heard. [61]

Defendant in Intervention, Claire B. Morse, now moves the court, under F.R.C.P., Rule 59, for a new trial, and respectfully shows:

I.

There is attached hereto a photostatic copy of a page from a government document entitled "Memo-

randum of Conference'' and covering a conference held in the revenue office at Chicago, Illinois, September 26, 1950. The original of said memorandum is contained in the government's administrative file in this proceeding.

In the course of the proceedings February 3, 1958, admission was made by the government (Tr. 2/3/58, p. 8, lines 8-14) that the 80 shares which it alleged were "owned" by defendant in intervention were merely issued in her name, without her knowledge, "prior to the dissolution of the corporation as part of the scheme for dissolution of the corporation and creating the partnership." As the attached exhibit shows, that admission was based on actual evidence in the government's possession. Not only does it negative any real and actual ownership of stock by defendant in intervention, it shows that the stock was charged to her at \$150 per share, or a total of \$12,000, so that under the terms of the purported partnership agreement, par. 20, the limited partnership interest entered therein under her name was subject to a lien in favor of Nathan Borin in the sum of \$12,000.

It follows also that when the court inquired of the government as to its evidence in respect to the issue of stock (Tr. 2/3/58, p. 9, lines 10-12) the government failed to inform the court of what evidence it actually had.

II.

Defendant in intervention was surprised when the court, after indicating (Tr. 1/3/58, p. 150, lines 22-23) that Exhibit U was immaterial and would

be disregarded, made a finding that she [62] owned 80 shares of stock in the Borin Art Products Corporation. If that finding was based on estoppel, defendant in intervention would be prepared to meet it strictly on the law. But the findings do not expressly indicate this, and except for said Exhibit U, or estoppel related to Exhibit 1, there is nothing whatever in the record to contradict the direct testimony of defendant in intervention that she owned no stock in the corporation.

III.

Because of the factors stated above, defendant in intervention submits that a new trial should be granted and additional testimony taken.

IV.

In the alternative, defendant in intervention moves the court to amend par. VII of its findings to read:

“Prior to the dissolution of said corporation, and as part of the scheme for dissolution of the corporation and creating the partnership, there was issued in the name of defendant without her knowledge eighty (80) shares of stock of said Borin Art Products Corporation, subject to a lien in favor of Nathan Borin in the sum of \$12,000.00.”

V.

Defendant in intervention also desires to point out that her contention, that if she had any transferee liability it was exhausted by payment by others of the sum of \$12,000 assessed against her in respect of the corporation's taxes for the years

1940 and 1941, was put in issue by the pre-trial conference order, p. 3, lines 27-31, and p. 7, lines 18-19; also by the Memorandum of Contentions of Fact and Law filed by defendant in intervention, p. 5, lines 14-17.

Respectfully submitted,

/s/ GEORGE T. ALTMAN,

Attorney for plaintiff and defendant in intervention. [63]

Borin Art Products Company

Issue No. 15:

Partial disregard of partnership.

Finding of Fact:

Borin Art Products Company is a limited partnership formed on May 1, 1943. Photostat copy of partnership agreement is attached to revenue agent's report as Bureau Enclosure H. The partnership was formed for the purpose of taking over the business formerly conducted by Borin Art Products Corporation (an Illinois corporation). The stockholders of record of the corporation became the partners in shares equivalent to their stockholdings in the corporation. Nathan Borin was designated the "general partner" and fifteen alleged stockholders were designated as "limited partners." Nathan Borin created a trust for three of his children, Mark Winston the trustee acquired a 15 per cent interest in the partnership. Copy of trust agreement is attached to revenue agent's report as Bureau Enclosure "A". A number of the limited

partners consists of members of Nathan Borin's family and relatives. Shortly before the partnership was formed Nathan Borin sold shares of capital stock of Borin Art Products Corporation to these individuals at \$150 per share to be paid from the proceeds of dividends declared by Borin Art Products Corporation or from profits of the limited partnership. See Bureau Enclosure "E" attached to and made a part of the revenue agent's report.

The examining officer concluded that a number of the limited partners did not qualify as bona fide partners and accordingly he proposes to make substantial adjustments to distribution of partnership earnings for each of the years under review. The examining officer's contentions are set forth on pages 2 to 6 of letter of transmittal of his report. See also Schedules 2, 3, 3-A, 5, 6, 6-A, 8, 9, 9-A, 11, 12 and 12-A of the revenue agent's report.

The limited partners disregarded in the revenue agent's report are as follows:

	Period 5/1/43 to 1/31/44	1945	F.Y.E. 1/31 1946	1947	Relation to Nathan Borin
lai: Borin	10%	10.32%	10.353%	—	Wife, divorced
ara Levin	5%	5.16%	5.136%	4.29%	Sister
dy: Krolik	7½%	7.74%	7.785%	6.50%	Sister
lar Winston, Trustee tin Borin Trust for					
Bany Joy Borin	5%	5.16%	5.193%	4.33%	Daughter
Daniel Borin	5%	5.16½	5.193%	4.33%	Son
Charles Borin	5%	5.17%	—	—	Son
ae: Borin	—	—	5.188%	4.32%	Son
	37½%	38.71%	38.848%	23.77%	
Borin	7½%	7.74%	7.785%	6.50%	Sister-in-law

Affidavit of George T. Altman

County of Los Angeles,
State of California—ss.

George T. Altman, being first duly sworn, deposes and says:

1. That the facts stated in the foregoing motion are true.

2. That because of the direct testimony of defendant in intervention that she owned no stock in Borin Art Products Corporation and the court's ruling in respect to immateriality of Exhibit U, the significance of the exhibit attached hereto did not come to his attention until the government admitted, February 3, 1958, that the issue of stock in defendant's name was "part of the scheme for dissolution of the corporation and creating the partnership."

/s/ GEORGE T. ALTMAN.

Subscribed and sworn to before me this 21st day of February, 1958.

[Seal] /s/ DOROTHY B. CLOVER,

Notary Public in and for said
County and State. [64]

Points and Authorities

"A new trial may be granted to all or any of the parties and on all or part of the issues * * * in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the

United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment." F.R.C.P., Rule 59 (a).

A new trial may be granted in case of surprise. *U. S. v. Kralmann*, (D.C., Ky., 1943) 3 F.R.D. 473, 475.

A new trial may be granted to prevent injustice. *McCracken v. Richmond, F.&R.R. Co.* (C.A. 4, 1957) 240 F. 2d 484.

A federal court has the same power to grant a new trial in the case of conflicting evidence as under other circumstances. *Boudrot v. Cochrane Chemical Co.* (C.C. Mass.) 110 Fed. 919, 922.

A motion for new trial is proper for the purpose of pointing out errors to the trial court and for furnishing a record to court of appeal for review of the trial court's action. *Fine v. Paramount Pictures* (C.A. 7, 1950) 181 F. 2d 300, 302.

A motion for new trial may also be made to give the trial court an opportunity to reexamine the entire factual [65] situation and applicable law. *Miller v. Pacific Mutual Life Ins. Co.* (D.C., Mich., 1954) 17 F.R.D. 121, 125, affirmed 228 F. 2d 889. [66]

Acknowledgment of Receipt of Copy Attached.

[Endorsed]: Filed February 21, 1958.

[Title of District Court and Cause.]

MEMORANDUM IN OPPOSITION TO MOTION FOR NEW TRIAL

Comes Now the defendant and plaintiff in intervention, United States of America, and opposes the motion for new trial by plaintiff and defendant in intervention, Claire B. Morse, for the following reasons:

1. The conclusions of law and the judgment entered thereon are consistent with, and well within, the findings of fact found by the Court to be true.

2. There was no error in law occurring at the trial in entering judgment in favor of defendant upon the Findings of Fact found to be true by the Court. [68]

Points and Authorities

A litigant has no absolute right to a new trial simply because he asks for one. *Walgreen Drug Stores v. Scruggs Drug Store, Inc.* 129 F. 2d 789 (4th Cir. 1942).

New trial should not be granted unless it is reasonably clear that prejudicial error has crept into the record or that substantial justice has not been done. *Vanek v. Chicago Great Western R. Co.* 252 Fed. 871 (D.C.N.D. Iowa 1918).

One of the essentials for the granting of a new trial is that the application show affirmatively that a different result would probably follow a new trial. *Blair v. Silver Peak Mines*, 93 Fed. 322 (Circuit Ct., D. Nevada 1899).

Where error of law is relied upon as ground for new trial, it is to be clearly shown by points and reasons not previously presented. *Giant Powder Co. v. California Vigorit Powder Co.*, 5 Fed. 197 (Circuit Ct. D. Calif. 1880).

When the granting of a new trial depends, not on the Court's judgment of the sufficiency of the evidence but upon a question of law, and the granting of a new trial would deprive the successful party of the finding of facts in its favor, the Court may be inclined to deny the motion in order to preserve rights dependent on the findings and permit the law questions to be determined by appeal. *United States v. Alpha Portland Cement Co.*, 257 Fed. 432 (D.C. E.D. Penn. 1919).

A motion for new trial should be based upon manifest error of law or mistake of fact, and a judgment should not be set aside except for substantial reasons. [69] *Solar Laboratories v. Cincinnati Advertising Products Co.*, 34 F. Supp. 783 (D.C. Ohio 1940), appeal dismissed, 116 F. 2d 497. A motion for rehearing on the ground of newly discovered evidence is addressed to the judicial discretion of the Court; but newly discovered evidence must be newly discovered in fact and not such as could have been produced by the exercise of reasonable diligence at the former trial. *Arkansas-Missouri Power Corp. v. City of Rector*, 164 F. 2d 938 (8th Cir. 1947).

The motion for new trial on the ground of newly discovered evidence should be denied for want of diligence in discovering the evidence and because

the alleged newly discovered evidence is merely cumulative. *Pasotex Pipe Line Co. v. Murray*, 168 F. 2d 661 (5th Cir. 1948).

On motion for new trial, the evidence and inferences therefrom must be viewed in light most favorable to prevailing party. *Pelham v. Hendricks*, 132 F. Supp. 774 (D.C. Pa. 1955).

Conclusion

The evidence introduced at the trial adequately supports the decision rendered. The points raised in the motion for new trial should in no way alter said decision, and even if said points or new evidence had been raised or introduced at the trial, it would not have been determinative of the issue presented. They are not relevant and should be accorded no weight.

The conclusions of law and judgment were within the findings of fact. Therefore, it is submitted that the motion for new trial be denied. [70]

LAUGHLIN E. WATERS,

United States Attorney,

EDWARD R. McHALE,

Assistant U. S. Attorney,

Chief, Tax Division,

JOHN G. MESSER,

Assistant U. S. Attorney,

/s/ JOHN G. MESSER,

Attorneys for Defendant and Plaintiff in Intervention, United States of America. [71]

Affidavit of Service by Mail Attached. [72]

[Endorsed]: Filed February 26, 1958.

[Title of District Court and Cause.]

SUPPLEMENT TO MOTION FOR NEW TRIAL

Except from audit report of Samuel H. Weber, certified public accountant, under date of December 19, 1947, a photostatic copy of said report being part of the government's administrative file in this proceeding:

"General Comment

"In the time allotted, it was not possible to make a comprehensive examination of the various enterprises to verify the full extent of Nathan Borin's interest therein. We present below a list of the enterprises examined, and as shown by the books and records, Nathan Borin's interest——

* * * * *

"Borin Art Products Company (Partnership)

"The partnership was organized in May, 1943 succeeding to the business of Borin Art Products Corporation, in operation since 1933. Subject to certain adjustments, the corporate assets, subject to the outstanding liabilities, were transferred to the partnership upon dissolution of the corporation. As of December 31, 1942, the stock of the corporation was held as follows:

	Number of Shares of
Stockholder	\$100.00 Par Value Each
Nathan Borin	669
Murray Ivers	200

	Number of Shares of \$100.00 Par Value Each
Stockholder	
Lester Witte	50
Simon Herr	31
Joseph Levinson	25
Harold Hoffman	15
M. Kedzior	10
Total Outstanding	<u>1000"</u>

[Endorsed]: Lodged March 3, 1958.

[Title of District Court and Cause.]

ORDER DENYING MOTION FOR NEW TRIAL

This matter having come before the Court on motion of the plaintiff for new trial of the above-entitled action, based on the motion, pleadings and memoranda of counsel, and the Court having considered the same, it is

Ordered that said motion for new trial be and is hereby denied.

Dated: March 10th, 1958.

/s/ HARRY C. WESTOVER,
United States District Judge.

Acknowledgment of Receipt of Copy Attached.

[Endorsed]: Filed March 11, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that defendant in intervention, Claire B. Morse, hereby appeals to the Court of Appeals for the Ninth Circuit from the judgment entered for plaintiff in intervention, which judgment was entered on February 17, 1958.

Dated this 7th day of March, 1958.

/s/ GEORGE T. ALTMAN,
Attorney for plaintiff and defendant in intervention. [76]

Acknowledgment of Receipt of Copy Attached.

[Endorsed]: Filed March 7, 1958.

[Title of District Court and Cause.]

DOCKET ENTRIES

10/25/56—Fld plfs memo of pts & auths in suppt of mot for prelim injunc.

10/25/56—Fld suit for injunction to enjoin defts fr collecting Income Taxes. Fld mot for prelim injunc & fld ord for hrg retble 11/5/56. Issd sum Md JS-5.

10/29/56—Fld Sums—re tn svd.

11/ 1/56—Fld defts memo in opposn to plfs mot for prelim injunc.

- 11/ 5/56—Entd procs hearg pltfs mot for injunc re collection taxes both sides argue & court ords mot denied on grounds that facts do not warrant granting same. Further ord that Govt atty prepare findings (Heard by Y.)
- 11/ 8/56—Fld reporter's transe of proceedings.
- 11/13/56—Lodged defts prop finds fact, concls law on denial of prelim injunc & ord dnyg prelim injunc.
- 11/15/56—Fld pltfs objecs to find fact, concls law & request for leave to amend complt if such amendment is necessary to clarify allegations.
- 11/20/56—Ent ord overruling plfs objcs to defts finds. Fur ord that sd finds & concls law be fld (Y).
- 11/20/56—Fld finds fact, concls law & ord deny plfs mot for prelim injunc. (Ent 11/21/56 & not attys).
- 11/23/56—Fld stip & ord thereon extg time for deft to plead to 12/10/56.
- 12/ 4/56—Fld defts not of entry of ord denying prelim injunction.
- 12/12/56—Fld stip & ord thereon extdng time of deft to 12/24/56 in wh to plead.
- 12/28/56—Fld stip & ord extendg time for deft to plead to 1/15/57.
- 1/15/57—Fld defts mots to dismiss wiht not mot retble 2/4/57 & memo pts & auths in suppt.

- 1/29/57—Fld amended complt. Fld prae (ltr) for
& issd sums on amended complt.
- 1/31/57—Fld sums on amended complt. Retd
served.
- 2/ 4/57—Fld pltfs memo of pts & auths in opposn
to defts mots to dismiss. Ent ord contg
hrq mot of deft (fld 1/15/57) to dismiss
to 2/11/57 10 AM.
- 2/11/57—Ent proc hrq mot of deft. (fld 1/15/57)
to dismiss and ent ord contg to 2/25/57
10:00 AM for fur hrq.
- 2/11/57—Fld defts interrogs.
- 2/25/57—Ent proc fur hrq mot of deft (fld 1/15/
57 to dismiss and on oral mot of deft
ord mot w/drawn and deft file an ans
to complt. Fur ord striking all interrogs
at this time.
- 5/31/57—Fld Answer to amend complt. Fld complt
in intervention of USA with ord author-
izing.
- 6/12/57—Fld Answer to complt in intervention by
Claire B. Morse.
- 6/19/57—Fld suppl to complt with order.
- 6/25/57—Placed on calen Sept 9, 1957 for p/t
conference purs to local rule 9 and filed
and mld copies Notice to counsel.
- 7/ 1/57—Fld Answer to supplement to complt &
ord permitting filing.
- 7/ 2/57—Fld defts affid serv by mail, defts An-
swer to supple to complt & ord permit-
ting flg.

- 7/12/57—Ent ord contg p/t confer from 9/9/57 to 9/16/57 10 AM. Counsel notifd.
- 8/ 2/57—Fld plfs memo of contentions of fact & law.
- 9/12/57—Fld pltf in intervention USA's p/t memo contentions fact & law.
- 9/16/57—Ent procs & ord contg p/t to 9/23/57 10 AM.
- 9/23/57—Ent procs p/t confer. Fld p/t confer order. Ent ord contg to 11/4/57 11 AM for settg for trial.
- 11/ 4/57—Ent proc & ord settg for trial 1/2/58, 10 AM.
- 11/27/57—Fld stip facts.
- 12/30/57—Fld suppl stmt pts & auths for purpose trial by pltf & deft in interven.
- 1/ 2/58—Ent procs trial. Sw wits. Fld exbs. Ent ord contg to 1/3/58 10 AM for fur trial.
- 1/ 3/58—Ent procs fur trial. Fld exbs. Ent ord finds for govt. Counsel for govt. to prepare finds, concls law & judgt & present on or before 2/3/58.
- 1/10/58—Fld stip & ord thereon extdng time of deft Riddell to & includg 2/3/58 in wh to lodge finds fact.
- 1/24/58—Fld mot in respect cert exbs with not mot retble 2/3/58 & pts & auths.
- 1/30/58—Fld pltfs argument on evidence & law & lodged proposed finds.

- 2/ 3/58—Ent proc hrg mot of plf and deft in intervention in respect of certain exhs and ent ord contg to 2/17/58, 2 PM for fur hrg.
- 2/ 5/58—Lodged defts proposed find fact, conc law & judgt.
- 2/13/58—Fld pltfs objecs to finds fact, concls law & judgt lodged by deft.
- 2/17/58—Fld finds fact, concl law & judg that plf hv nothing from deft Riddell & dismiss compl for injune, & fur fv plf in interv n USA against deft in interv n Morse in sum of \$12,000.00 with int, & fv deft Riddell and USA for costs. (Ent 2/17/58 & not attys). JS6. Ent procs fur hrg mot of pltf & deft in intervention in respect of cert exbs & ent ord denying mot. Ct signs finds & judgt present by the govt.
- 2/19/58—Fld ord denying mot in re certain exbs.
- 2/21/58—Fld not deft entry judgt & fld defts cost bill. Fld mot of Claire B. Morse retble 3/3/58 10 AM for new trial with exbs, affid of Geo. T. Altman & memo of pts & auths in suppt thereof.
- 2/26/58—Fld memo deft & pltf in intervention in opposn to mot for new trial. Taxed costs fav deft \$26.00, dktd & ent costs.
- 3/ 3/58—Ent proc hrg & ord denyg mot of pltf & deft in intervention for new trial. Lodged supple to mot for new trial.

- 3/ 7/58—Fld not appeal Claire B. Morse, pltf & deft in intervention. Copy received by John Messer, Asst. U. S. Atty. Fld cash bond in amt of \$250.00. Fld desig contents rec on appeal & fld state pts on which pltf, etc, intends to rely.
- 3/11/58—Fld ord denying mot for new trial. Fld amend pltf & deft in intervention to desig contents record on appeal & fld amend to statement of pts on wh pltf & deft in intervention intends to rely.
- 3/17/58—Fld pltf in interventions add desig record on appeal.
- 3/18/58—Fld plts 2nd amend to stmt pts on wh pltf, deft in interven intends to rely & fld 2nd amend to desig contents record on appeal.
- 3/19/58—Fld repr's transe for 2/17/58.
- 3/27/58—Fld orig reporters trans predgs (6 vols) dtd 1/2 & 1/3/58, 2/3/58, 2/11/57, 2/17/58, 2/25/57 & 3/1/58. [103]

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above entitled Court, hereby certify the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above entitled case:

A. The foregoing pages numbered 1 to 103, inclusive, containing the original:

Complaint in Intervention.

Answer to Complaint in Intervention.

Pre-trial Conference Order.

Stipulation, filed 11/27/57.

Notice of Motion and Motion in Respect of certain Exhibits.

Findings proposed by Plaintiff, Defendant in Intervention.

Plaintiff's objections to Findings of Fact, Conclusions of Law and Judgment lodged by Defendant.

Findings of Fact, Conclusions of Law and Judgment.

Order denying Motion in respect of certain Exhibits.

Notice of Motion and Motion for New Trial.

Memorandum in opposition to Motion for New Trial.

Supplement to Motion for New Trial.

Order denying Motion for New Trial.

Notice of Appeal.

Designation of Contents of Record on Appeal.

Statement of Points on which Plaintiff, Defendant in Intervention intends to rely.

Amendment to Designation of Contents of Record on Appeal.

Amendment to Statement of Points on which Plaintiff, Defendant in Intervention, intends to rely.

Plaintiff in Intervention's additional Designation of Record on Appeal.

Second Amendment to Designation of Contents of Record on Appeal in response to Designation of Plaintiff in Intervention.

Second Amendment to Statement of Points on which Plaintiff, Defendant in Intervention, intends to rely.

(Copy) Docket Entries.

B. Plaintiff's Exhibits—1, 2, 3, 6, 7, 9, 10, 11, 12, 13. Defendant's Exhibits—A, B, C, L, M, N, O, P, Q, R, S, T, U, V, W, Z.

C. Six volumes of Reporter's Official Transcript of Proceedings had on: 2/11/57 and 2/25/57—1/2/58, 1/3/58, 2/3/58, 2/17/58 and 3/3/58.

I further certify that my fee for preparing the foregoing record, amounting to \$2.00, has been paid by appellant.

Dated: Los Angeles, California, this 3rd day of April, 1958.

[Seal]

JOHN A. CHILDRESS,
Clerk,

/s/ By WM. A. WHITE,
Deputy Clerk.

In The United States District Court, Southern
District of California, Central Division

No. 20638-HW Civil

CLAIRE B. MORSE, Plaintiff,
vs.

ROBERT A. RIDDELL, District Director,
Defendant.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

CLAIRE B. MORSE, Defendant.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Los Angeles, California
Thursday, January 2, 1958

Honorable Harry C. Westover, Judge Presiding.

Appearances: For the Government: Laughlin E. Waters, United States Attorney; by John G. Messer, Assistant United States Attorney, and Eugene Harpole, Assistant United States Attorney. For Claire B. Morse: George T. Altman, Esq., 233 South Beverly Drive, Beverly Hills, California. [2]*

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Mr. Altman: To begin, your Honor, we have agreed on a very slight correction in a paragraph of the pretrial order. On page 3, Paragraph 11,

* Page numbers appearing at top of page of Reporter's Transcript of Record.

where it starts out with the words "The United States had previously assessed" we have agreed—counsel can check me on this—to insert in the second line of that paragraph after the word "corporation," the following words:

The Court: What line is that now?

Mr. Altman: Line 28, I believe.

The Court: Page 3?

Mr. Altman: Yes, page 3.

The Court: All right.

Mr. Altman: The line beginning with the words "Plaintiff as alleged transferee."

The Court: All right.

Mr. Altman: We have agreed to insert after the [3] word "corporation," the words "because of the distribution upon dissolution of said corporation," with commas before and after that insertion.

The Court: Now, let's see.

"Plaintiff as alleged transferee of the said corporation," because of what?

Mr. Altman: "Because of the distribution on dissolution of said corporation," with commas before and after.

The Court: All right.

Mr. Altman: I believe, also, that we have agreed that the records may include to the extent material the case reports in the following three cases, all of them headed *Borin vs. Borin* which, as you can see, your Honor, would be litigation in which the taxpayer here was a party. I will give you the citations. 329 Illinois Appellate 188, 67 Northeastern (2d) 423; 335 Illinois Appellate 450, 82 North-

eastern (2d) 70; and the third one is 343 Illinois Appellate 649, 100 Northeastern (2d) 333.

The Court: Let's see if I have those now. That is 67 Northeastern (2d) 423, 82 Northeastern (2d) 70, and 100 Northeastern (2d) 333.

Mr. Altman: Yes. The understanding is that to the extent to which these case reports are material here, they may be included as part of the record.

The Court: All right. [4]

* * * * *

JOHN L. HARRIS

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination

Q. (By Mr. Altman): Mr. Harris, what is your business or occupation?

A. Examiner of questioned documents and handwriting expert.

Mr. Messer: Your Honor, in order to save time, I believe we will stipulate that Mr. Harris is qualified as a [6] handwriting expert. [7]

* * * * *

Q. Mr. Harris, I have another document here entitled "Agreement," being a positive photostat of a document recorded in Book 38240 at Page 213.

Mr. Altman: May this be marked for identification as No. 8?

The Court: It may be marked.

(Testimony of John L. Harris.)

The Clerk: Just a minute. Is that one of the other exhibits that have been marked?

Mr. Altman: Yes. This is the same thing.

The Clerk: Then that is Exhibit No. 1, your Honor, which has already been marked.

Mr. Altman: This is the same thing.

Q. Mr. Harris, will you give me your opinion, also, of what purports to be the signature of Claire Borin on page [9] 10 of this Exhibit No. 1.

A. In my opinion, based on an examination I made of this signature and a comparison of the genuine signatures on Exhibit 5, I would say in my judgment the Claire Borin signature on Exhibit 1 is an imitation of the genuine handwriting of Claire Borin and was not, in my opinion, written by the same person who wrote the genuine signatures.

Q. Mr. Harris, I would like to ask you, also, in regard to this document, whether it appears that someone tried to imitate her signature?

Mr. Messer: I object to that, what somebody tried to do, whether somebody tried to imitate the signature.

The Court: May I ask the witness a question?

The Witness: Certainly, your Honor.

The Court: You say that is not her signature. Is that a traced signature?

The Witness: No, it is not, your Honor. I would say it is just an imitation.

The Court: An imitation?

The Witness: It is an attempt to copy a signature. It is not like the one on the income tax return

(Testimony of John L. Harris.)

which shows no resemblance to her signature at all, but this signature does have some resemblance to the genuine handwriting.

Q. (By Mr. Altman): You say it is an attempt to copy her signature? [10]

A. It might be. That would be my opinion, yes. [11]

* * * * *

CLAIRE MORSE

the plaintiff herein, called as a witness in her own behalf, having been first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination

Q. (By Mr. Altman): Mrs. Morse, your name, your previous name, was Claire Buchman or Claire B. Buchman, is that correct? A. Yes.

Q. That is B-u-c-h-m-a-n? A. Yes.

Q. And before that it was Claire Borin?

A. Yes.

Q. You were the wife of Nathan Borin, is that correct? [17] A. Yes.

Q. Will you state the year in which you were married to Mr. Borin?

A. November 11, 1933. [18]

* * * * *

Q. (By Mr. Altman): Were you married to Mr. Borin at the time of his death? A. No.

Q. You had been divorced from him?

A. Yes.

The Court: Well, when were you divorced?

(Testimony of Claire Morse.)

The Witness: I was divorced in 1949.

The Court: What month?

The Witness: March 1, 1949. [19]

* * * * *

Q. (By Mr. Altman): Mrs. Morse, did Mr. Borin ask you to sign a large check, I mean endorse a large check for him? A. Yes, he did.

Q. How much was the check?

A. \$10,000.

Q. Was that just before you left for Florida?

A. Very shortly, about a week before I left.

Q. Did you endorse it for him?

A. Not at that time.

Q. Did you later? [21] A. I did.

Q. Before you went to Florida?

A. Before I left for Florida.

* * * * *

Q. Was it a check made out to you that you endorsed, do you remember?

Mr. Altman: I will withdraw that, your Honor, because that seems to be a rather foolish question.

The Court: It might have been made payable to both the husband and wife.

Was it made out payable to you individually or to you and your husband?

The Witness: I believe, your Honor, it was made out to me.

The Court: Individually?

The Witness: Yes, sir.

The Court: Where did the check come from?

(Testimony of Claire Morse.)

The Witness: It was a business check—I mean in his business.

The Court: The firm's business?

The Witness: The name of his business. [22]

* * * * *

The Court: Did you ever own any stock in the corporation?

The Witness: No, never owned anything.

The Court: Did you ever attend a meeting of the board of directors?

The Witness: No, sir.

The Court: Did you ever attend an annual meeting of stockholders?

The Witness: Never.

The Court: Did you ever receive any dividends from the corporation?

The Witness: No, your Honor, never received anything.

The Court: Then the corporation was liquidated, wasn't it?

The Witness: I never knew anything about his business, your Honor. He never discussed his business with me. [26]

The Court: When this so-called partnership was formed, were you given a copy of the partnership agreement?

The Witness: I never knew it was formed. I never knew anything about it, nothing.

The Court: Let me see the exhibits. I want to call your attention to Exhibit 1, which is supposed to be a limited partnership agreement. Prior to

(Testimony of Claire Morse.)

going to Florida in 1945, had you ever seen this agreement?

The Witness: No, your Honor.

The Court: When did you first see the agreement?

The Witness: The first—after I returned from Florida and I filed suit for divorce, I had returned and found documents in our apartment and I had immediately taken them to my attorney, who at that time represented me in Chicago, and turned all these documents over to him. But I did not know the meaning or anything about them.

The Court: I didn't ask you if you knew what the documents meant. I said when did you first see the documents?

The Witness: I never saw a document until I was told I signed a document that I was a partner, which I never saw.

The Court: Who told you you were a partner?

The Witness: Well, when I returned from Florida with my child, I had filed separation proceedings two days [27] later, and upon my return to our home in Chicago, I found all these documents in our room, and I took them to my attorney, who at that time was Benjamin B. Davis in Chicago, and he went over all these papers, which he then at that time told me that did I know—

The Court: Don't tell me what he told you. When did you return from Florida?

The Witness: I returned from Florida in March.

The Court: What year?

(Testimony of Claire Morse.)

The Witness: 1945.

The Court: When did you go to Florida?

The Witness: February 1945.

The Court: Then you were down there just about a month, is that right?

The Witness: Yes, your Honor.

The Court: Then you came back and filed divorce proceedings?

The Witness: Yes.

The Court: You found some papers in your home?

The Witness: Yes.

The Court: And you took those papers to your lawyer?

The Witness: Yes, your Honor.

The Court: Was this Exhibit 1 among the papers you took to your lawyer, or do you remember?

The Witness: I don't remember. I just turned over a lot of papers, but I did not understand.

The Court: When did you first discover you were supposed to have signed this Exhibit No. 1?

The Witness: When I had taken—I don't know. I just don't remember. There were so many court proceedings in the divorce.

The Court: You took these papers to your lawyer?

The Witness: Yes.

The Court: You say your lawyer looked at them?

The Witness: Yes.

(Testimony of Claire Morse.)

The Court: Did he ever discuss with you this Exhibit 1?

The Witness: No, sir, he did not.

The Court: Did you ever tell your lawyer that you had not signed Exhibit 1?

The Witness: I didn't know—he never discussed this with me. He just asked me if I had known I was—if I had some interest in the business which I knew anything about, because he said certain papers indicated that I had some interest, which I never knew anything about, because he said certain papers indicated that I had some interest, which I never knew anything about, and it proceeded on and on and on, and up to this day, your Honor, I still don't know.

The Court: Prior to your divorce from Mr. Borin, [29] was there a property settlement agreement?

The Witness: Yes, there was.

The Court: Did the property settlement agreement say anything about this so-called interest you had?

The Witness: No, sir.

The Court: Have we got a copy of the property settlement agreement?

Mr. Altman: I really don't know. I do have here as a witness the attorney who handled her divorce.

The Court: I know, but the property settlement agreement is the best evidence. I don't think an attorney can testify from memory now as to what was contained in the property settlement agreement.

(Testimony of Claire Morse.)

If you have the attorney who handled the divorce, he ought to have a copy of the property settlement agreement somewhere. [30]

* * * * *

The Court: Are you willing to stipulate that this corporation existed prior to the marriage of Mr. and Mrs. Borin?

Mr. Messer: The documents I have indicate that this corporation was incorporated under the laws of the State of Illinois on September 15, 1932, Borin Art Products Corporation. [34]

* * * * *

The Court: Have you got any transcript of the stock record to show it was issued to her?

Mr. Messer: No. Mr. Altman and I have gone into that. I think we will both agree that there was nothing. There was a fire here, your Honor, and many of the records of the corporation, unfortunately, were destroyed.

The Court: There is such a thing as having stock written up in the name of the party and the stock certificate never delivered, or such a thing as the husband having the stock certificate written up and taking the stock certificate but never giving it to the wife.

Mr. Messer: That is very true, your Honor. There are many situations where a person may have no knowledge of what may be on a certificate. I think I may be out of order, your Honor. [35]

* * * * *

The Court: I am going to assume that there is

(Testimony of Claire Morse.)

no question of *res judicata*. I am going to assume the matter has not been decided by a court, that is the interests of this witness in the partnership or in the corporation.

Mr. Altman: Except to this extent, may I say, your Honor, that there was a decree of divorce and the decree makes no reference of any kind to any interest in a partnership.

The Court: I am going to still assume that there is no court that has passed upon this particular question.

Mr. Altman: I have no objection to that, your Honor. [36]

* * * * *

The Court: Let me do something here I think the attorney should have done in the first place.

I want to show the witness Exhibit 1. I call your attention to the signature Claire Borin. Is that your signature?

The Witness: No, your Honor. [43]

* * * * *

Mr. Altman: May I interrupt at this time my questioning to tell you that I have found the final divorce decree. If the Government wants this put into evidence I will be glad to put it in. I have no purpose in putting it in myself, but here it is. That is the final divorce decree.

Mr. Messer: I have no objection. I see no purpose in it unless it refers to some interests we are concerned with.

The Court: Then let's leave it out then.

(Testimony of Claire Morse.)

Mr. Messer: That's right, your Honor.

The Court: There is no use encumbering the record.

Mr. Messer: That's right. I would just as soon not have it in.

The Court: All right.

Q. (By Mr. Altman): Mrs. Morse, I would like to show you Plaintiff's Exhibit 6, being the 1944 return, apparently bearing your signature, and will ask you whether at the time you signed it there was anything on the return except the printed part of it?

A. No. It was a complete blank.

Q. Do you remember where you signed it?

A. I believe I was away when it was mailed to me in Florida. I am not sure now.

Q. Did anyone call you up about it or write in about it? [45]

A. Mr. Locker, who at that time worked for Mr. Borin, called me in Florida and said he was mailing me some papers to sign, and he mailed them, and I signed them and mailed them right back.

Q. You say this was completely blank at the time you signed it? A. Completely.

Q. Coming back, Mrs. Morse, to Plaintiff's Exhibit 8, there is a document here as one of the three, which reads, "Notice of Waiver of Restriction on Assessment and Collection of Deficiency in Tax," and the other two read "Consent Fixing Period of

(Testimony of Claire Morse.)

Limitation Upon Assessment of Income and Profits Tax."

In regard to this one that reads Waiver of Restriction, at the time that you signed it, did you understand it to be an agreement to pay the tax?

A. Certainly not. I just signed it. [46]

* * * * *

Mr. Altman: I wonder if your Honor would be willing to read this letter again in connection with those three documents. You will notice all three are stamped by the Revenue Office as received March 19th, the three of them.

The Court: Do you remember from whom the document was, or who wrote the document, or who signed the document dated March 13, 1951?

The Witness: This letter, your Honor?

The Court: Yes.

The Witness: Mr. Nathan H. Rosenthal of Chicago.

The Court: Who was he?

The Witness: He was representing me.

The Court: Your attorney?

The Witness: Yes.

The Court: He was an attorney, was he?

The Witness: Yes.

The Court: And he sent you this letter dated March 13? [47]

The Witness: Yes, your Honor.

The Court: It is your testimony, is it, that these documents that have been marked Exhibit 8 were included in the letter of March 13?

(Testimony of Claire Morse.)

The Witness: Yes, your Honor. [48]

* * * * *

The Court: May I ask the witness a question? You received all these documents at one time, did you?

The Witness: Yes, your Honor, I did. [51]

The Court: They were all in one letter?

The Witness: Yes.

The Court: All right.

Q. (By Mr. Altman): Mrs. Morse, did you ever receive any salary from the Borin Art Products Corporation? A. No, sir.

Q. Did you ever receive any salary from Borin Art Products Company——

Mr. Messer: I object, your Honor, on the ground of immateriality, whether she received any salary or whether she worked for them. It is the question here whether she was a transferee of the property.

* * * * *

The Court: Objection sustained.

Mr. Altman: Your Honor, my reason for the question, if I may now explain, is the document, Plaintiff's Exhibit 1, shows that she was to receive a salary. Naturally, if she received a salary she would know what she was doing there.

The Court: She said she never knew anything about this document. [52]

Mr. Altman: Thank you.

* * * * *

Q. (By Mr. Altman): Mrs. Morse, other than the checks for your household expenses, did you

(Testimony of Claire Morse.)

ever receive any money or property from Mr. Nathan Borin or from his corporation or what is purported to be his partnership, Borin Art Products Company? A. No, never.

Mr. Messer: I object to the question.

The Court: Sustained. You let the Government prove whatever she got and don't try to cover everything. The Government may be able to pinpoint this. [53]

* * * * *

Q. (By Mr. Altman): Did you ever receive any money or property as a shareholder of Borin Art Products Corporation? A. No, sir, never.

Mr. Messer: I object to that question.

The Court: I asked her that once before and she said no, and you didn't object then. I asked her if she got anything from the corporation and she said no. I asked her if she was a stockholder or officer or ever attended stockholders' meetings or board of directors' meetings.

The objection is overruled.

Q. (By Mr. Altman): Did you ever receive any money or [54] property as a partner from the Borin Art Products Company?

A. No, sir, never.

* * * * *

Cross Examination

Q. (By Mr. Messer): Mrs. Morse, at this time I hand you Defendant's Exhibits D through K marked for identification and I ask you to look at the signature on each of these documents.

(Testimony of Claire Morse.)

A. Yes.

Q. Is the signature on each of these documents your signature? [55]

A. Yes, they are.

Q. I ask you to look at Exhibit D marked for identification and tell me whether or not you signed that document?

A. Yes, I did. [56]

* * * * *

The Court: May I ask the witness, did you pay any tax for 1941?

The Witness: I didn't, your Honor. At that time I was always getting papers to sign and I signed them. I didn't know what they meant. I have never paid any tax. [58]

* * * * *

Q. (By Mr. Messer): Mrs. Morse, I show you Government's Exhibit L marked for identification, headed "Transferee Agreement" dated February 8, 1946, and also Exhibit M marked for identification, a transfer agreement dated February 8, 1946, and I will ask you if the signature shown on each of those two documents is yours?

A. Yes.

Q. You signed those two documents, did you not?

A. Yes.

Q. Now, Mrs. Morse, I show you Exhibit N marked for identification, headed Form 977, Treasury Department, dated January 14, 1947, headed, "Consent Fixing Period of Limitation Upon Assessment of Liability at Law or in Equity," etc. Is that your signature?

A. Yes.

Q. Mrs. Morse, I show you a document marked Exhibit O for identification, Form 977, dated De-

(Testimony of Claire Morse.)

September 4, 1947, headed "Consent Fixing Period of Limitation Upon Assessment of Liability at Law or in Equity," etc. Is that your signature on that document? A. Yes.

Q. I will ask you further, not only is that your signature on that document, but more specifically you did sign those documents, did you not? [62]

A. I signed them, but I never read them.

Q. You signed them?

A. They were mailed to me. I had been signing them for years, considering them waivers of time, upon my attorney's advice to just mail them.

Q. You signed them and sent them to your attorney? A. My attorney, yes.

Q. Who was representing you in this litigation?

A. All my litigation. [63]

* * * * *

The Court: May I inquire, is this tax which is alleged to be due the tax of the corporation or the tax of the partnership?

Mr. Messer: It is the corporation in this suit, your Honor.

The Court: It is the corporation tax?

Mr. Messer: Borin Art Products Corporation.

The Court: Is that right?

Mr. Altman: What is that?

The Court: Is the tax in this suit the tax of the Corporation?

Mr. Altman: It is the tax of the Borin Art Products Corporation, that is correct. [64]

* * * * *

(Testimony of Claire Morse.)

Mr. Messer: At this time I wish to offer in evidence Government's Exhibits P, Q, R and S for identification, which are the partnership returns of income for the years 1943, 1944, a short period of 1945, and 1946.

The Court: Now have you got an objection?

Mr. Altman: I will object to the admission of any of these forms, your Honor. As to these, and I say, she has no connection with them. Unless she had some connection with them, I am going to object to their admission.

The Court: Overruled. That is a question for the court to decide. They may be marked in evidence.

* * * * *

Q. (By Mr. Messer): Mrs. Morse, on or about February 8th or thereabouts, 1946, did you file an action in a Chicago court for dissolution of the partnership of Borin Art Products Company?

A. I didn't. I don't know what my attorneys filed. I was having court proceedings and I turned over all documents to them and they proceeded from then on. I don't know what [65] has been filed and what happened. I can't say really.

Q. Let me ask you this. Did you have knowledge that your attorneys were filing a complaint in chancery for the dissolution of the partnership of Borin Art Products Company?

A. I can only answer it this way. They were just protecting me. I was trying to get a divorce. There was litigation for four years. I don't know

(Testimony of Claire Morse.)

what they were doing. They never explained all the details to me. [66]

* * * * *

Q. (By Mr. Messer): Mrs. Morse, I ask you to look at Government's Exhibit T marked for identification, headed State of Illinois, County of Cook, in the Circuit Court of Cook County in Chancery, Claire Borin vs. Nathan Borin, L. V. Locker, et al., No. 46C1685, headed, "Complaint in Chancery for Dissolution of Partnership, Accounting, and Other Relief."

Turning to page 6 of said document, I ask you to look at the signature thereon. A. Yes.

Q. Is that your signature? A. Yes, it is.

Q. You signed that document? A. Yes.

Q. I turn now to page 7 of the same document and ask you to look at the signature thereon.

A. Yes.

Q. Is that your signature? A. Yes, it is.

Q. You signed that document? A. I did.

Q. On or about the date shown?

A. I can't remember that. That is my signature.

Q. Let me ask you this. Do you recall signing this particular page before a notary? [67]

A. I don't remember. I have signed so many papers.

Q. You don't recall at the time you made both of these signatures whether one of them was before a notary or not?

A. I have signed so many documents I can't recall them all.

* * * * *

(Testimony of Claire Morse.)

The Court: Counsel, I notice in Exhibit T, according to that exhibit, it says under date of September 18, 1945, she received from the Borin Art Products Company a letter purporting to terminate plaintiff's interest in said partnership, copy of which letter is attached hereto, marked Exhibit B.

Mr. Messer: We don't have those copies, your Honor. They weren't attached to that. I would be glad to introduce it if we could have that.

The Court: The letter certainly is a part of this complaint.

Mr. Messer: The complaint, however, her allegations in it, that is true, are the important part, the part we are introducing it for, your Honor, the part where she alleges her interest in the partnership and has asked for [68] dissolution of the partnership. [69]

* * * * *

Mr. Altman: One more point. I believe counsel and I have agreed at this point I might, if I like, introduce Plaintiff's Exhibit 1 for identification. That is the partnership agreement, the exemplified copy, which is now in the record.

Is there any objection?

Mr. Messer: If I understand what counsel just said, you are introducing it for identification?

Mr. Altman: No.

The Court: Are you offering it in evidence?

Mr. Altman: That is correct. I thought you had [70] agreed to that.

(Testimony of Claire Morse.)

Mr. Messer: But you said for identification. We talked about in evidence.

The Court: It may be received in evidence.

The Clerk: Plaintiff's Exhibit 1 in evidence.

* * * * *

Mr. Messer: Your Honor, at this time I would like [71] to introduce Defendant's Exhibit U for identification in evidence. Said exhibit is entitled "Abstract of Record, No. 43689, in the Appellate Court of Illinois, First District, April Term, A.D., 1946."

I direct the court's attention particularly to page 2, the paragraph on page 2 at the bottom thereof which ends on page 3.

The Court: Any objection?

Mr. Altman: I don't think so. May I take a quick look at it?

Your Honor, I have agreed with counsel that this was actually taken from the records of the Appellate Court of Illinois, and that was the reason I marked on it over my signature, "Need not be certified."

I may also say counsel has referred only to certain pages. I may want to refer to any part of it.

The Court: You can do so.

Mr. Altman: May I say, also, if counsel will check it, that I believe this was a case which was involved in 335 Illinois Appellate previously referred to. I believe it was.

The Court: It may be received in evidence.

Mr. Messer: I meant to offer in evidence the

(Testimony of Claire Morse.)

entire document. I was merely directing your attention to that part of it. [72]

The Court: The entire document is received in evidence.

The Clerk: Defendant's Exhibit U in evidence.

* * * * *

The Court: Exhibit U is an abstract of record on appeal. Does Exhibit U refer to the same case as Exhibit T?

Mr. Messer: No, your Honor. Exhibit U refers to a divorce action commencing in Illinois.

The Court: Whatever happened to Exhibit T?

Mr. Messer: That is the complaint for dissolution. That is a complaint in chancery for dissolution. That is a separate complaint entirely.

The Court: What happened to it? Was it ever prosecuted?

Mr. Messer: I don't know, your Honor. That was brought in 1946. It is when the partnership went out of existence. [73]

* * * * *

Mr. Messer: The Government at this time offers in evidence Exhibit marked V for identification, which is certificate of assessments and payments in re Claire Borin Buchman, transferee, for the period herein involved, the year 1941, and the period from January 1, 1943 to April 30, 1943.

Mr. Altman: Your Honor, I would like to object to that on the ground I think it is incumbent upon the Government to show that the taxes of this corporation have not been paid, that they are not ask-

(Testimony of Claire Morse.)

ing her to pay something that for all we know may have been paid by someone else. [74]

Mr. Messer: Your Honor, that is for the taxpayer to present.

The Court: Objection overruled. It may be received in evidence.

* * * * *

Q. (By Mr. Messer): Mrs. Morse, did I understand you correctly when you testified that during all the time that you were asked to sign these particular documents which you had exhibited to you and identified as being those which you had signed, that you were represented by an attorney in these proceedings?

A. Well, I wish to correct myself. I was represented by Mr. A. C. Rosenthal, who was an accountant who handled these matters for me. I was in California all during this time that they were under his——

Q. You received these documents, then, from either your certified public accountant or from an attorney? A. Yes.

Q. You didn't receive them from your husband, did you, or from your former husband, Mr. Nathan Borin? A. No.

Q. When they were sent to you by the CPA, or the attorney, were you requested to sign and return them to him? [75] A. Yes.

Q. Do you recall who your attorney was in your action for divorce in March 1945?

A. I had several attorneys in 1945, Martin Mc-

(Testimony of Claire Morse.)

Nally, James McDermott, I think Mr. Gold, and Mr. A. C. Lewis.

Q. On the return which you testified was sent to you in blank to Florida, how did you know it had nothing on it? I believe you testified it had nothing on it.

A. It had nothing on it. When I left Chicago I had endorsed that \$10,000 check. I was reluctant to sign anything. Mr. Locker had phoned me from Chicago and said it was just something that they needed and naturally, when you are married and you try to have faith, you go ahead and sign. I signed it and returned it.

Q. But you testified it had nothing on it, that it was absolutely blank.

A. Absolutely blank.

Q. Then you read the entire form, did you not?

A. No. I just signed it and put it in the mail and mailed it back.

Q. Then you don't know whether it was in blank or not?

A. There was no writing, no script writing.

Q. Any typing on it?

A. A regular form, like all business forms.

Q. Was there typing on it? [76]

The Court: When you say it was blank, you mean it was printed with blank lines and there was nothing in the lines.

The Witness: Yes, your Honor.

Q. (By Mr. Messer): No figures whatever anywhere on the form? A. No, sir.

(Testimony of Claire Morse.)

Q. Then you read the form thoroughly to find that out, didn't you? A. I never read it.

The Court: You don't have to read a form. You can take a form and look at it and read it to see whether there is anything written in it.

Mr. Messer: An income tax return which has only a distributable share in a partnership income usually has about one item on it and, well, a person looking at it, they could easily skip over the one item that was filled in. I want to know how she knew it had nothing on it.

The Court: She looked at it.

Mr. Messer: She must have read it.

Q. You knew what the form was, didn't you?

The Court: She said she looked at it. You don't have to read it.

Q. (By Mr. Messer): Let me ask you. Did you know it was an income tax return? [77]

A. I don't know what it was, really. Just like I received one yesterday at our house. I turned it over to my husband. I looked at it and said, "This is something for you." [78]

* * * * *

The Court: May I inquire, have you collected taxes from the other members of the partnership?

Mr. Messer: I do not know that, your Honor. That was in Chicago. That is not part of the Government's case. [86]

* * * * *

The Court: Do you know what happened to this case that was filed in Cook County against Nathan

(Testimony of Claire Morse.)

Borin and the fire insurance companies relative to the payment of the insurance? Do you know what happened to that case?

The Witness: No, I don't, your Honor, because I had so much litigation going on in my divorce troubles, and everything was in the hands of attorneys, and I left everything to them. I really don't know anything about it.

The Court: Wouldn't you know if there was a [92] settlement made of some kind.

The Witness: All I remember is that, I don't remember the attorney's name, but he was supposed to have—I mean he was representing me, and he also had me sign some papers, and I thought they were something pertaining to helping me, and I signed a release for all the insurance policies, about nine of them, which I learned later that I released \$900,000 to Nathan Borin, and he mentioned all the records at that time in this factory were burned and no one knew anything, but I also signed papers like that, as well as some of these other papers. [93]

* * * * *

The Court: I want to know if this witness got anything other than this so-called partnership agreement.

Mr. Messer: I don't think any of the others got anything except the so-called partnership agreement, because the thing went flat on its face and they were held for the corporation taxes. [98]

* * * * *

The Court: Well, legally you may be right,

(Testimony of Claire Morse.)

counsel, but morally and equitably, I don't think you are.

Mr. Messer: Your Honor, morally and equitably we fight a lot of these cases that hurt us as much as anyone. I have one now that I wish I didn't have.

The Court: Bring it here and I will get rid of it for you.

Mr. Messer: I know, your Honor, that harsh cases [99] come along in taxes. Taxes are harsh for all of us. It is a harsh case. [100]

* * * * *

The Court: * * * The only thing she reports in 1944 is this \$32,239.

Mr. Messer: That's right. That is her distributable share of the partnership income for that year.

The Court: She already paid taxes on that of \$14,114.

Mr. Messer: Those are income taxes from her distributable share of the partnership. The partner doesn't have to receive the money, your Honor.

The Court: Let me ask this witness a question. Do you remember this 1944 return you filed?

The Witness: I remember being mailed that to Florida. It was mailed to me in Florida.

The Court: All right. Now, it says, "Enter your tax from table on page 2," and you enter your tax of \$14,925.62.

"By payments of 1944 declaration of estimated tax \$14,114.51."

(Testimony of Claire Morse.)

The Witness: But, your Honor, there was nothing in there. It was blank. [102]

The Court: It was blank?

The Witness: Yes.

The Court: You are sure when you signed this one that none of these signatures was on the form at all?

The Witness: Nothing. There was just nothing. It was mailed to me just like the other. He said it was urgent and to return it immediately.

The Court: Do you recognize this signature, L-o-c-k-e-r?

The Witness: I don't know, but it was Mr. Locker that worked for the company. I don't know whether that is his signature or not, because it is so many years ago. This is 1945.

The Court: Was his signature on this form when you signed it?

The Witness: It must be, because I spoke to him long distance. I tried to reach Mr. Borin on account of our child and I wasn't able to reach him, so I phoned the office, and Mr. Locker told me he was mailing me some papers.

I said, "I am not going to sign anything."

He said, "It is urgent for the business."

He mailed it and I signed it and mailed it right back.

The Court: You didn't make this \$14,000 payment, did you? [103]

The Witness: No, sir. I have never seen anything. I have never known anything about it. I have

(Testimony of Claire Morse.)

never made any payments. I don't know anything about it.

The Court: When did you first see this income tax return after you signed it and sent it back to Chicago? When did you see this return?

The Witness: I didn't see any of these things until after my divorce action, and I put myself on record at the Internal Revenue, because I had endorsed this \$10,000 check, which I wanted to know what I did and I was being involved in a lot of trouble. The rest of the procedures went on with my attorneys, and from 1945 to 1949 I was being—I wasn't divorced until four years later. [104]

* * * * *

Mr. Messer: I know it is a harsh case, but it would be harsh on [107] all these other twelve or fourteen partners who had an interest. [108]

* * * * *

Redirect Examination

Q. (By Mr. Altman): Mrs. Morse, referring to Plaintiff's Exhibit 1, referring to what appears to be your name on page 10, did you authorize anyone to sign that for you? A. No, sir, never. [118]

* * * * *

Q. (By Mr. Altman): References have been made here to a certain abstract, Mrs. Morse, being Defendant's Exhibit U, and I will ask you again whether the proceedings which were filed on your behalf were prepared by your attorneys.

A. Yes.

* * * * *

(Testimony of Claire Morse.)

Q. Mrs. Morse, did you yourself inform your attorneys that you were a partner? A. No.

Q. Mrs. Morse, did you sign documents prepared by attorneys in faith upon what they represented the documents to be? A. Yes, I did. [119]

* * * * *

Q. (By Mr. Altman): Mrs. Morse, have you had any business experience? A. No, sir.

Q. Were you ever qualified for any work in connection with the Borin Art Products Company?

A. No, sir.

Mr. Messer: I object to that line of questioning.

The Court: Sustained. I don't think it makes any difference at all. The court is satisfied she doesn't know anything about business practices.

* * * * *

Q. (By Mr. Altman): Mrs. Morse, prior to March 1945 when you found the documents in the apartment and brought them to your attorney, did you have any knowledge whether Mr. Borin had you down as a partner on his records?

A. No.

Mr. Messer: Object to that.

The Court: Sustained. We have gone into that before. I think you are just going over and rehashing the testimony that has been introduced. [124]

* * * * *

Recross Examination

Q. (By Mr. Messer): Mrs. Morse, Exhibit T, I believe you testified this [125] was your signature on this complaint in Chancery. Could you tell us,

(Testimony of Claire Morse.)

did you discuss with your attorney prior to the time you signed this concerning your action? Did you have any conference with him or talk to him over the telephone?

A. Which litigation is this? I don't know.

* * * * *

The Court: Do you remember the conversation you had with your attorney relative to the filing of this complaint?

The Witness: Your Honor, I had all these documents and I just turned them over to my attorney and he proceeded from then on. It was concerning my divorce mostly. He proceeded with other things, but I don't know what they are today.

Q. (By Mr. Messer): Is it possible in these papers you turned over to him to look over a copy of this partnership [126] agreement which was among those papers?

A. I don't remember any partnership agreement.

Q. Is it possible it could have been in those papers? A. I don't know. I just don't know.

Q. Then you don't recall discussing this partnership with your attorney before you filed this complaint?

A. All I know is I turned all of the documents over to him. I was mainly interested in my divorce and my child, and the rest proceeded, which I don't know anything about.

* * * * *

A. C. LEWIS

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows: [127]

* * * * *

Direct Examination

Q. (By Mr. Altman): Mr. Lewis, are you an attorney? A. I am.

* * * * *

Q. Mr. Lewis, did you at one time represent Mrs. Claire Morse in litigation? A. I did.

* * * * *

Q. Now, Mr. Lewis, did you handle the final divorce proceeding? [128] A. I did. [129]

* * * * *

Q. (By Mr. Altman): Mr. Lewis, will you explain the reason for the changes from the amended complaint in the [136] second amended complaint?

A. Yes, sir. The amended complaint charged the offense of adultery. After the filing of that, I got Mr. and Mrs. Borin together in my office on a Saturday, and they composed their differences and agreed upon the payments to be made as alimony and agreed upon the custody of the child, and he agreed not further to contest the case.

Thereupon I filed the second amended complaint in which I deleted the charges as to adultery and charged only extreme and repeated cruelty on two occasions to simplify the proof.

Q. Is that in accordance with policy in the State of Illinois?

A. Yes, in accordance with general practice.

(Testimony of A. C. Lewis.)

Q. Will you tell me, Mr. Lewis, about this meeting in your office, you said on a Saturday? Who was at that meeting?

The Court: What difference does it make? The only thing I am interested in in this complaint is whether or not there was a property settlement agreement, and if there was, what reference, if any, it had to the co-partnership.

Mr. Altman: That is the question, your Honor.

The Court: Maybe the co-partnership was all over by this time. [137]

Mr. Altman: That is the question, your Honor. I want to bring out what the plaintiff here really had in her mind, because there she was in an actual meeting.

The Court: May I ask the witness, was there a property settlement in this case?

The Witness: Yes, sir.

The Court: Was it reduced to writing?

The Witness: No, I think it was not.

The Court: It was not approved by the court?

The Witness: No, sir. It wasn't shown to the court.

The Court: If there is an objection, I will sustain the objection, because unless the court passed upon the property settlement agreement, I don't think the agreement of the parties can preclude the government from proceeding along its theory.

Mr. Altman: My purpose is not to show the agreement, your Honor, but, rather, to show the facts and the claims that were made by this plain-

(Testimony of A. C. Lewis.)

tiff, the actual claims she made and knew she was making.

The Court: Do you have an objection?

Mr. Messer: I have an objection.

The Court: Sustained.

Mr. Messer: And I can give the grounds.

Mr. Altman: May I put it this way, your Honor. [138] There has been an attempt to bind this plaintiff, although I, of course, don't believe she could be bound by it, but an attempt to bind her by certain statements and allegations made in certain complaints. We don't know what happened to those complaints. I think we should know. We should know not simply what was in the formal papers that were filed, but what was actually done and what was in her mind.

The Court: I think the objection on hearsay is good. The government wasn't present. They won't be bound by those statements.

Mr. Altman: This is a part of the *res gestae* in this case.

The Court: I will sustain the objection, so you just go ahead and proceed. I don't want to waste any more time on this line because I don't think it is material at all.

Q. (By Mr. Altman): Mr. Lewis, did Mrs. Borin, now Mrs. Morse, ever make any statement or representation to you relating to an interest in a partnership? A. Never. [139] * * * * *

Mr. Altman: Your Honor, Mr. Lewis has already testified that he handled the payments.

(Testimony of A. C. Lewis.)

The Court: I don't think it makes any difference, counsel. If there had been a property settlement agreement, a formal property settlement agreement entered into between these parties, and if it had anything to do with the so-called partnership, I would admit it in evidence, but I can't admit in evidence the oral testimony of a party as to what his impressions were. I don't know whether they came to any agreement or not.

Q. (By Mr. Altman): Mr. Lewis, did the parties come to an agreement at your office at that time after the filing of the amended complaint?

The Court: Same ruling. I think this is entirely immaterial, counsel.

Q. (By Mr. Altman): May I ask this, Mr. Lewis? Did the closing of all the litigation pass through your hands, the litigation between Mrs. Morse and Mr. Borin?

Mr. Messer: I object to that, all the litigation. I don't know whether he would be acquainted with that.

The Court: There is still some litigation in the Tax Court.

Mr. Altman: I am referring to the litigation between Mrs. Morse and her former husband.

The Court: What difference does it make? Are you [140] trying to establish the fact that there was no partnership because Mrs. Borin didn't tell her attorney anything about this partnership?

Mr. Altman: So far there has been an attempt to bind her by what appears in certain papers.

(Testimony of A. C. Lewis.)

The Court: If this witness can testify as to the incorrectness of any document that has been introduced here, I will be glad to hear the witness, but we have documents here in which Mrs. Morse has said there was a partnership, agreed there was a partnership.

Q. (By Mr. Altman): Mr. Lewis, after you filed this second amended complaint, did you hear anything about a partnership?

A. Yes. Subsequently I did.

Q. What statements were made to you as to that, or were any statements made to you as to whether that was in truth and in fact a bona fide partnership?

Mr. Messer: I object to that.

The Court: Sustained. It is objectionable on the ground it is hearsay. The government wasn't participating in any way in those conversations, and unless you can establish that they were—— [141]

* * * * *

The Court: I am satisfied, Mr. Altman, that Mr. Borin treated this partnership as his own business. He didn't ask his wife anything about it. He didn't pay her any dividends. He didn't give her anything. She didn't get anything [142] out of it. I am satisfied of that, but that is not the problem here. The problem is, was she entitled to anything? She could have filed an action at any time, I suppose, to terminate the partnership agreement and have her pro rata part of the assets. [143] * * * * *

(Testimony of A. C. Lewis.)

Direct Examination—(Continued)

Q. (By Mr. Altman): Mr. Lewis, is it a permitted practice in the Illinois courts for an attorney to verify a pleading without the signature of either of the parties litigant?

Mr. Messer: I object. [149]

The Court: Sustained. You have got a document here that has been signed, and I think before a notary public. Now you want to say she didn't do it.

Mr. Altman: No, your Honor. I am referring to this abstract of record, which doesn't show. Counsel yesterday especially referred to pages 2 and 3 of that abstract. I have looked over it very carefully. I am unable to find even a statement it was verified. I may have an incorrect copy, but I fail to find even a statement that the complaint was verified or by whom it was signed.

The Court: What difference does it make? I don't think it makes any difference whether it was customary practice or not. The record shows we have a complaint here. We have a copy of the complaint which shows that a complaint was signed and verified.

Mr. Altman: It doesn't say verified.

The Court: I don't care about that. You are talking about the divorce proceeding.

Mr. Altman: I am talking about this abstract record, pages 2 and 3, the part to which counsel yesterday directed our attention.

The Court: I don't think divorce proceedings

(Testimony of A. C. Lewis.)

have anything to do with this case. I read the three Illinois cases. I don't think the cases have any place in this record at all. There is one issue here, whether or not there was [150] a partnership and whether or not she was a member of that partnership.

She could have been a member of the partnership either by signing the articles of partnership or by her subsequent actions.

Mr. Altman: Yes, your Honor. That is the reason I refer to pages 2 and 3 of this document, which do refer to a partnership.

The Court: Let me see your document.

Mr. Altman: I have a copy of what you have there. It is pages 2 and 3.

The Court: My ruling still stands.

Mr. Altman: At this time, your Honor, I would like to move then, if I may—I will withdraw that.

* * * * *

The Court: I don't know. We haven't got anything here to show the question has been decided. If you can show me a court that has ruled that there was no partnership, I will be glad to follow the ruling of that court. You have got a court of record there, but you haven't got anything before me yet to indicate any court ever passed upon the [151] question of the partnership.

* * * * *

Mr. Altman: This decree in the case of Borin vs. Borin, 45 S. 5229, contains a complete statement of facts and it doesn't show anything about

(Testimony of A. C. Lewis.)

a partnership. It contains a complete statement of the facts of the findings of the court in this case and goes further. It shows the income——

The Court: Don't tell me what it shows. I will look at it myself and see. I wanted counsel to take a look at it.

* * * * *

The Court: This is the divorce proceeding.

Mr. Altman: It is in the divorce proceeding, yes, your Honor. It is in the very proceeding concerning which there is that abstract of record.

The Court: Well, this court doesn't make a finding that there is no partnership agreement. [152]

Mr. Altman: But it does make findings that Mr. Borin had income from the partnership, gives the years, and then it says that Mrs. Borin had no funds, was entirely without funds or means.

The Court: Is there an objection?

Mr. Messer: Yes, there is.

The Court: Objection sustained.

* * * * *

Mr. Altman: And may the record show where reference was made to a copy of a letter dated March 13, 1951, addressed to Mrs. Claire B. Buchman, that the reference was to Plaintiff's Exhibit for identification No. 13.

The Court: The record may so show.

The Clerk: 13 for identification. [153]

* * * * *

The Court: The facts in this case indicate that these papers were looked at by an accountant.

They were looked at by an attorney. Both of them came to the conclusion there was a partnership and, not only that, but she signed, she verified a complaint for the revocation of the partnership and for an accounting. Not only that, but she has admitted to the government on numerous occasions that [154] there was a partnership here.

I don't know how she is going to avoid it. I feel sorry for her. If I was deciding this thing in the first instance, I am rather doubtful I would find there is a partnership. * * * * *

But, however, even though there may not be a partnership, the plaintiff here, the taxpayer, assumed there was a partnership, acted as if there was a partnership. * * * * *

The Court: I would not find that the plaintiff in this action was bound by the partnership agreement under the evidence before me unless it had been for her actions after the date of the agreement. [155]

* * * * *

The Court: What are you going to do with the opinion of the attorney who filed—let me see that exhibit, the photostatic copy of the complaint for the dissolution of the partnership. What are you going to do with the attorney in the case of Borin vs. Borin, filed in the Circuit Court of Cook County, which is signed by her and verified by her? She didn't do that herself. She had to have an attorney. [156]

* * * * *

CLAIRE B. MORSE

recalled as a witness herein, having been heretofore duly sworn, was examined and testified further as follows:

The Clerk: Mrs. Morse, you have heretofore been sworn so you are still under oath. You may be seated.

Redirect Examination

Q. (By Mr. Altman): Mrs. Morse, prior to 1943, did your husband, Mr. Borin, pay your personal living expenses? A. Yes.

Q. Household expenses? A. Yes.

Q. Did he continue to do that in 1943 and thereafter?

Mr. Messer: I object to this line. It all comes back to the divorce proceeding which has helped us not at all. It is immaterial.

The Court: Sustained. I don't know what difference it makes.

Mr. Altman: Your Honor, I come again to the criteria of the existence of a partnership as shown by these cases of the United States Supreme Court.

The Court: Objection sustained.

Q. (By Mr. Altman): Mrs. Morse, did any representatives of the government ever discuss the partnership with you? [158] A. Yes.

Q. What did they tell you about the partnership? Just a minute. I will withdraw that.

Who was present at that time?

A. Mr. Weeden of Chicago.

Mr. Messer: At which time?

(Testimony of Claire B. Morse.)

Mr. Altman: At the time the agents of the government discussed the partnership with her.

Mr. Messer: I don't see that that has any bearing here at all.

The Court: On what theory are you presenting this? Are you trying to show estoppel?

Mr. Altman: Your Honor stated yesterday, when I tried to bring out statements that had been made by others, that the partnership was a phony. Your Honor stated if that was said by the government agents, that would be different. That is exactly what I am trying to do here. I am trying to show by this witness that the government agents themselves said to her and told her again——

The Court: Who was the government agent?

Mr. Altman: That is what I am asking her.

The Witness: Mr. Weeden of Chicago, Internal Revenue.

The Court: What post did he hold?

The Witness: Well, he was on this Borin case.

The Court: Was he a Deputy Collector? Was he in the Agent's office, or in the——

The Witness: I don't know, your Honor, except they called me for an appointment to interview me, at Mr. Joe Rosenthal's office. I can't remember the name of the other man but I think it was Mr. Malik. I think it was someone—it was both of them. They had told me that they definitely were of the opinion that the entire partnership was a dummy set-up and that it was for the pur-

(Testimony of Claire B. Morse.)

pose of—it was Nathan Borin's purpose to do this to evade taxes. [160]

* * * * *

Q. (By Mr. Altman): Mrs. Morse, did you ever render any service to the partnership?

A. No, sir. [167]

* * * * *

Recross Examination * * * * *

Q. (By Mr. Messer): Mrs. Morse, I show you a document marked for identification W, entitled Form 843, and headed Claim to be Filed with the Collector where Assessment was made or Tax Paid. I ask you to look at that document, and particularly at the signature at the bottom thereof. Is that your signature? A. Yes.

Q. Did you sign that? A. Yes.

Q. Did you read the sentence just above that when you signed it? A. What sentence?

Q. Did you read the sentence just above there?

A. No.

Q. You didn't read it?

A. I just signed it. I never read any of those. I signed them for my husband, too.

Q. Did you know the content of this document at the time you signed it? A. No.

Q. I show you a document marked X for identification, [170] headed Form 843, claim for the period January 1, 1945, to December 31, 1945. Is that your signature?

A. But these were sent to me blank. That is

(Testimony of Claire B. Morse.)

my signature. I don't remember reading anything or seeing any of the figures.

Q. Are you testifying that these papers also were sent to you in blank and you signed it?

A. Yes.

Q. You never read the contents?

A. Yes, that is what I say.

Q. And you swore under oath everything was true?

A. I had faith in my attorneys or accountants, or whoever sent them to me at the time.

Q. Is that your signature? A. Yes, sir.

Q. And you signed this document?

A. Yes, sir.

Q. I show you another document marked Y for identification, headed Form 843, Claim. Is that your signature? A. Yes.

Q. You signed that document? A. Yes.

Q. Was it also in blank when you signed it?

A. Everything. I just left everything to Mr. Rosenthal and my accountant. [171]

Mr. Messer: At this time I offer these claims in evidence.

The Court: They may be received in evidence.

Mr. Altman: No objection.

The Clerk: W, X, and Y in evidence.

* * * * *

Q. (By Mr. Messer): Mrs. Morse, the first document I showed you, the first sentence states, "The income on which claimant paid income taxes

(Testimony of Claire B. Morse.)

in the amount of \$24,596.39 for the taxable year 1945, consisted"—and so forth.

Is that a true statement?

A. I don't know. I have never seen any of this.

Q. Is that a true statement? Did you pay those taxes?

A. I don't know. I don't know anything about any of this.

Q. Do you understand what this document is at this time? Claim for refund? Was it ever explained to you after it was filled in?

A. I never was concerned about those things. I was glad to be free and glad to have peace, and I left everything to my accountants and my late husband. I didn't know anything about these things.

Q. Who presented these documents to you in blank for [172] signature?

A. Mr. Rosenthal would mail them to me.

Q. Did he ever explain what the purpose was?

A. No. He might have explained them to Mr. Buchman, but not to me. I just signed them.

Q. Mrs. Morse, I will ask you one question. I believe you stated that you never paid the taxes involved in the year 1944 or the year 1945. Do you feel if you did not pay the taxes you are entitled to a refund of those taxes?

The Court: Objection sustained. It doesn't make any difference what she feels.

Q. (By Mr. Messer): Put it this way. Do you

(Testimony of Claire B. Morse.)

know whether or not any of those taxes shown were ever paid?

A. I can't say. I don't know. I just don't know.

Mr. Altman: Your Honor, I wonder if counsel will stipulate with me that we several times offered to close this case without collection of any of those moneys.

The Court: What difference does it make?

Mr. Messer: What?

Mr. Altman: I mean if her honesty is being impugned here without——

The Court: I don't think her honesty is impugned. She has indicated by her own testimony she doesn't know anything about this transaction. I don't think she knows anything [173] about the transaction. However, that doesn't absolve her from liability. If she relies upon the integrity of her accountant or her attorney, she can't later come in and say she is not bound.

* * * * *

Mr. Altman: I would again, if I may, attempt to introduce this plaintiff's exhibit for identification. I think it is this one right here, No. 12, your Honor. I offer that for the reason that it is an adjudication by an Illinois court making findings of fact as to what means Mrs. Morse had and what distributions Mr. Borin under the name of the partnership made, because these are pertinent to a [174] determination as to whether this part-

nership was in fact just a sham under the cases pertinent in that connection.

Mr. Messer: I object.

The Court: If that is another motion for the introduction of that document in evidence, the motion is denied. [174a]

* * * * *

Mr. Altman: I will offer in evidence Plaintiff's Exhibit 2 for identification, being a letter from the Treasury Department to Mrs. Claire Borin dated June 3, 1948.

Mr. Messer: I object to the introduction of that letter, your Honor, since it concerns the years 1940 and 1941 of the corporation, and that is not in issue.

The Court: Overruled. It may be received in evidence.

The Clerk: Exhibit 2 in evidence.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 2.)

Mr. Altman: I will offer Plaintiff's Exhibit for identification No. 3. Any objection?

Mr. Messer: I object again. That is the years 1940 and '41. We are not concerned with those at all.

The Court: Overruled. It may be received in evidence. [177]

* * * * *

Mr. Altman: No. 12. I will again offer that in evidence, being the exemplified copy of a decree of the Court of Cook County in Chancery, Illinois,

in case No. 45 S 5229, Claire B. Borin vs. Nathan Borin.

Mr. Messer: I object to it.

The Court: Sustain the objection.

Mr. Altman: I will again offer Plaintiff's Exhibit No. 13 for identification, being a copy of a letter dated March 13, 1951, to Mrs. Claire B. Buchman.

Mr. Messer: Object.

The Court: I will sustain the objection.

* * * * *

Mr. Messer: The government offers in evidence exhibits marked for identification A through O.

Mr. Altman: I am going to object to all of them, your Honor. May I state my grounds?

The Court: Yes.

Mr. Altman: As to all of them, I want to state that they are immaterial and irrelevant. They consist, all except two, and I will refer again to those two, of consents to an extension of the statute of limitations. I see no pertinence to this proceeding of the mere fact that Mrs. [179] Morse on being approached for tax would sign a consent to extend the statute so that the government may give the matter further consideration.

The Court: Objection overruled. They may be admitted in evidence.

Mr. Altman: As to those two, one is marked L and the other M, which are different from the others, being entitled transferee agreements, I will also object on the ground that they are immaterial and irrelevant. They show that Mrs. Morse agreed

to be treated as a transferee to the extent of her liability as transferee under the Internal Revenue Code.

As far as I can see, that is no agreement at all.

The Court: Objection overruled. They may be received in evidence.

The Clerk: Government's A through O in evidence.

(The exhibits referred to were received in evidence and marked Government's Exhibits A through O.)

The Clerk: P, Q, R, S, T, U, and V are in evidence.

Mr. Messer: Yes, your Honor.

We will offer Exhibit T which was marked for identification.

Mr. Altman: I will object to that on the ground that while Mrs. Morse identified her signature on the last [180] two pages, there is no indication that any of the other pages are the same as those that were before her when she signed. There is also nothing to show that this was ever filed in court.

The Court: Objection overruled. It may be received in evidence.

The Clerk: Government's Exhibit T.

(The exhibit referred to was received in evidence and marked as Government's Exhibit T.)

Mr. Messer: Next the government offers in evidence Plaintiff's Exhibit marked 8 for identification, offers it as a government exhibit.

Mr. Altman: I will object to that on the ground

that we have not been allowed to show the circumstances under which that was signed, to show that actually there was misrepresentation to her, and that it was represented to her, and I am referring only to the first page of that exhibit, it was represented to her as a mere extension of time, and we were not allowed to put that fact in evidence.

The Court: Objection overruled. It may be received in evidence as Exhibit Z.

The Clerk: Government's Exhibit Z in evidence.

(The exhibit referred to was received in evidence and marked as Government's Exhibit Z.)

* * * * * [181]

The Court: I will further find she did not sign the so-called partnership agreement or did not authorize anybody to sign it for her, but that subsequent to the signing of the partnership agreement she recognized the partnership agreement, and became obligated thereunder.

As a part of the recognition of the partnership agreement, she signed a complaint for dissolution of the partnership and accounting which was verified on the 8th day of February, 1946, and in that complaint she sets out the partnership agreement and that it existed, and in the complaint she says that on or about the first day of May, 1943, the defendant Borin, that is Nathan Borin, and plaintiff, that is Claire Borin, the plaintiff in this action, and certain other individuals entered into a certain partnership agreement, that said agreement was duly recorded, and so forth and so on.

Also in certain papers that she filed with the

Internal Revenue Department, she sets forth that she was a limited partner, and not only that, but she filed claim for refund as a limited partner.

It seems to me that Mrs. Borin is now estopped [184] from denying the partnership, although if it hadn't been for her subsequent acts and conduct, I would feel she was not liable, but I am basing my opinion purely on the actions of Mrs. Borin.

* * * * *

The Court: I feel sorry for Mrs. Borin because I don't think she knew what was going on. I am satisfied that she signed a lot of papers in blank for her accountant or for her attorney, but anybody that signs an application or a paper in blank can't later be heard to complain that she is not responsible.

I would like the findings to contain the express finding that I am finding Mrs. Borin liable because of her conduct subsequent to the first day of May, 1943. I think because of her conduct she is now estopped from denying that there was a partnership.

Now, counsel, if you think that you have any authorities relative to this question of estoppel or the question of the imposition of liability upon Mrs. Borin because of her actions after the first day of May, 1943, I would be very glad to read your authorities.

My sympathy is with Mrs. Borin. I think she is [185] being called upon to pay a tax on something she didn't get.

* * * * *

The Court: Under the authority of *Neil vs. United States*, which I decided in this court, although I think the equities are in favor of Mrs. Borin and she is being called upon to pay a tax here upon property she didn't actually receive, nevertheless, as counsel for the government pointed out, she had a right at any time after the first day of May, 1943 to demand her pro rata share and to demand a dissolution of the partnership. [186]

* * * * *

The Court: Well, you argue it with the Circuit. I would like to see the Circuit reverse me in this case from an equitable standpoint, because I think it is unfair, although I am quite sure the government attorneys will not agree with me, I think it is unfair to require taxpayers to pay a tax upon something they don't get on the theory that they could have got it or might have got it.

Mr. Altman: Your Honor has already found she did not receive anything. If she did not receive anything, I don't see under the cases what basis there could be for transferee liability. Let me point out to your Honor the transferee liability is limited to the assets received as a distributee of the corporation.

The Court: If you have got a case that says it is limited to the assets received, I would be happy to read it. [187] But I think you will find it is not a question of the assets received, but the assets she might have received or could have received.

* * * * *

The Court: No, I won't go any further than

the partnership agreement says. Here was an assignment made from [188] the corporation to the partnership. The corporation is liquidated. She had 10 per cent of the corporation assets. They gave her 10 per cent of the partnership assets. She was entitled to her 10 per cent. If she didn't demand her 10 per cent or she didn't get her 10 per cent, that is her fault. As far as I know, the 10 per cent may still be there. This partnership may still be in existence. It may still have some assets. I don't know.

* * * * *

The Court: You agree with me, do you not, even though one does not sign a contract, nevertheless he can be bound under the contract because of his subsequent acts?

Mr. Harpole: If he accepts the benefits, I think so, yes.

The Court: Don't predicate it upon accepting the benefits, because I am going to find she didn't get any benefits. [189]

* * * * *

The Court: Mr. Altman, in the past eight years I have decided a number of law cases upon equity, and the Circuit tells me I shouldn't do equity, that I should follow the law. I think the equity is in favor of your client. [190]

* * * * *

[Endorsed]: Filed March 27, 1958.

[Title of District Court and Cause.]

TRANSCRIPT OF PROCEEDINGS

Monday, February 3, 1958, 10 A.M.

* * * * *

Mr. Altman: Your Honor, I was a little chagrined after I read the transcript and compared it with notes of mine of what I intended to do at a certain point. I found it was not there.

What I had in mind was this. I am referring to pages 149 to 151 of the transcript, beginning at the bottom of 149, line 21. There I was laying a foundation for a motion to withdraw Defendant's Exhibit U from the evidence, and then apparently when I got down to page 151 I somehow got diverted from that and didn't make my motion.

The Court: Let me ask you a question? Why do you want to withdraw Exhibit U? On what theory? Is it immaterial?

Mr. Altman: Well, that it is hearsay primarily, your Honor, and also it is immaterial.

The Court: Well, if it is immaterial, the Circuit Court will ignore it, won't it? I ignored it. If it is [3] immaterial, I ignored it. I didn't pay any attention to it. If it is immaterial, what difference does it make?

Mr. Altman: In that case, if your Honor finds it is immaterial, why, I have no complaint.

The Court: I didn't predicate my judgment upon that exhibit at all.

Mr. Altman: Upon Exhibit U?

The Court: No.

Mr. Altman: Well, I think that is about it, then, your Honor.

The Court: Where we have a case tried without a jury, if any evidence is admitted inadvertently that is immaterial, I usually disregard it. If there isn't something else in the record to sustain the finding, why, I wouldn't make the finding. But I think from all the testimony that has been introduced here that the court's finding that the plaintiff had an interest in the corporation, that the assets were turned over to the partnership, and she had an interest in the partnership, I think there is plenty of evidence to sustain the finding without that exhibit.

Mr. Altman: Without Exhibit U?

The Court: I think so. [4]

* * * * *

The Court: But the fact of the matter is that I considered the record in those divorce cases as immaterial, because it was not in the divorce case alone that she set up that she had an interest in this partnership. She filed an independent action.

Mr. Altman: I understand that, your Honor.

The Court: That is what I predicated my finding on.

Mr. Altman: In other words, your conclusion was based on Defendant's Exhibit T, the independent action.

The Court: Well, I don't know about that. It was based on that plus other evidence.

Mr. Messer: Yes, sir, there is other evidence.

The Court: But not solely upon that.

Mr. Altman: May I inquire, your Honor, whether it was in any part based on the recitals in the partnership agreement?

The Court: No. The only thing that I say to you [5] is that I did not consider in any way any of the evidence that was admitted relative to the divorce action that was filed and then taken to the upper courts.

Mr. Altman: What I was just referring to, your Honor, was the recitals in Exhibit U. No, it isn't that. Strike that. The recitals in Plaintiff's Exhibit 1, that is the partnership agreement. There was a recital in there and, of course, we didn't introduce it for the purpose of——

The Court: I found specifically she hadn't signed that partnership agreement.

Mr. Altman: Yes.

The Court: I am predicating my judgment upon one theory only, and I wish it to go up on that theory.

Mr. Altman: Yes.

The Court: That is, here was a partnership agreement that she didn't sign.

Mr. Altman: Yes.

The Court: She didn't get anything under the partnership agreement except a claim that she possibly could have collected upon.

Mr. Altman: Yes.

The Court: However, afterwards she set up that there was a partnership agreement, that she was a partner, and she brought an action to terminate the partnership agreement and for an accounting.

Now, I say she was estopped [6] from denying the partnership. [7]

* * * * *

Mr. Messer: That was in the agreement. However, in the partnership where each of their proportionate shares in the corporation—the shares in the corporation, which she acquired, by the way, she may not have had knowledge of at the time, but she acquired prior to the dissolution of the corporation as part of the scheme for dissolution of the corporation and creating the partnership. She acquired 80 shares of stock, which she alleged she owned at the time she filed suit for divorce. Then from the 80 shares of stock she acquired a 10 per cent interest in the partnership which was later formed and which is laid out in Exhibit 1, Plaintiff's Exhibit 1.

Then later she attempted to dissolve the partnership and have an accounting, alleging she had this 10 per cent interest, which she acquired through the 80 shares of stock in the corporation, whose assets were all transferred to the partnership upon dissolution of the corporation. [8]

* * * * *

The Court: May I inquire, have you any evidence that the shares of stock were actually issued to the plaintiff?

Mr. Messer: I don't think there is now, your Honor, because all the records were destroyed in the fire that they had. We have to go by other evidence as to what her interests were. The records were destroyed at a time years ago when the cor-

poration records were destroyed at that time. All the records were destroyed. * * * * * [9]

The Court: But I think you have got to establish first she had an interest in the corporation. I thought there wasn't any question about her having an interest in the corporation.

Mr. Messer: It has been stipulated the corporation was dissolved and all the assets of the corporation went into the partnership.

Mr. Altman: That is correct, your Honor.

The Court: I know about that.

Mr. Messer: It is also in Exhibit 1, which you say she ratified and adopted as her own. It sets out there the interest of each that they had. [11]

* * * * *

[Endorsed]: Filed March 27, 1958.

[Title of District Court and Cause.]

TRANSCRIPT OF PROCEEDINGS

February 17, 1958, 2:00 O'Clock, P.M.

* * * * *

The Court: Well, I have been going over the findings and judgment presented by the government, and also the objections or the proposed findings as filed by the plaintiff and defendant in intervention.

The last time we were here counsel for plaintiff and defendant in intervention said there was a question whether or not Claire Boren was the owner of 80 shares of stock of the Boren Art Products Corporation. I will refer you to page 182 of the

transcript, which came at the end of the case, and I said: "I will make a finding in this case, and I wish the attorneys would keep track of what I am finding so that they can incorporate them in the written findings—I will make a finding in this case that Claire Boren was the owner of 80 shares of stock of Boren Art Products Corporation."

I have gone over the entire file and all the exhibits and I am satisfied there is enough evidence in the record to sustain that finding. [2]

Also, I set forth that I wanted the government to incorporate in the formal findings that were filed my findings. I have gone over the findings as lodged by the government and I can't find anything wrong with them, because I think that they are in accordance with my oral statement at the conclusion of the trial.

* * * * *

The Court: Mr. Altman, I don't want to discuss with you the evidence in this case. At the conclusion of the case after hearing the testimony, when the case was fresh in my mind, I made a finding that Mrs. Boren was the owner of 80 shares of stock. I have gone back over the record. I have read the exhibits. I have read the contract. I am satisfied with that finding. [3]

* * * * *

The Court: At the time of the trial we argued this case. We argued it the last time. After the last hearing, I reread the entire transcript, and I read it once before. In the meantime I have read the entire transcript again to determine

whether or not in my opinion there was sufficient evidence there to justify my finding that Mrs. Boren owned 10 per cent of the stock of the corporation. I feel sorry for her. I would like to hold for her. But I just can't do that.

* * * * *

The Court: I am sorry. You argue it before the Circuit. I am going to deny your motion relative to the striking of certain exhibits. They were introduced in evidence in this case and they are a part of this case, and the court came to its conclusion from all the evidence introduced in the case, not from part of it, but all of it. Your motion is denied. I have signed the findings of fact and conclusions of law. * * * * [5]

[Endorsed]: Filed March 19, 1958.

[Title of District Court and Cause.]

TRANSCRIPT OF PROCEEDINGS

Monday, March 3, 1958, 10:00 A.M.

* * * * *

Mr. Altman: If your Honor will take a look at pages 149 and 150 of the transcript, you will notice that when we came back for trial the next day, I attempted to lay a foundation [2] for striking Exhibit U. I had in the meantime read it through very carefully, and I began to lay the grounds, the foundation for striking that exhibit.

Then while I was in the process of that, your Honor stated that this was just one of the divorce proceedings, the exhibit that I referred to, and

that you considered all these divorce proceedings immaterial.

Then the next statement, your Honor, you will notice in the middle of page 151, I was about to make a motion there. My motion was to strike the exhibit, but realizing that your Honor had stated that the exhibit was immaterial, I came to the conclusion that my motion was unnecessary, that actually in effect Exhibit U was no longer a part of the evidence. Realizing that, I proceeded thereafter on that basis. [3]

* * * * *

[Endorsed]: Filed March 27, 1958.

PLAINTIFF'S EXHIBIT No. 1

* * * * *

AGREEMENT

This Agreement, made and entered into this 1st day of May, 1943, by and between Nathan Borin, party of the First Part, and all such persons hereinafter designated Limited Partners whose names are set out hereinafter under the designation of "Limited Partners", parties of the Second Part, all of Chicago, Cook County, Illinois.

Whereas, the said First and Second parties (as will more fully hereafter appear), were the sole holders of shares of stock of Borin Art Products Corporation, (an Illinois corporation, doing business and having its principal place of business in the Town of Cicero, Illinois), and that said parties held shares of stock in the amounts set opposite their names.

Plaintiff's Exhibit No. 1—(Continued)

Name of Shareholder	Number of Shares
Nathan Borin	80
Claire Borin	80
L. V. Locker	40
Joseph Levinson	40
Harold Hoffman	40
Martin Kedzior	25
E. J. Ruzak	25
Simon Herr	30
Isadore Weinert	15
Milton Kessler	15
Lester Witte	50
Sarah Levin	40
Sam Borin	40
Mark Winston, Trustee for Bonny Joy Borin and Daniel Borin and Charles Borin	120
S. J. Weiss	40
Ida Borin	60
Edith Krolík	60

Whereas, it was considered to be in the best interest of all of the shareholders of said corporation to dissolve said corporation and continue the operation of the business of said corporation as a Limited Partnership having first party hereto act as General Partner and the said second parties to be Limited Partners; and,

Whereas, with that object in view, the aforementioned corporation is being dissolved pursuant to the laws of the State of Illinois; and,

Plaintiff's Exhibit No. 1—(Continued)

Whereas, upon dissolution of the aforementioned shareholders of said corporation will become entitled to proportions of the property of said corporation or the proceeds thereof after payment of all just debts to the extent that their stockholders bear to the entire issuance of stock.

Now, Therefore, the parties hereto mutually agree to become partners in the business of Borin Art Products Company for the period and upon the terms following, to-wit:

(1) The name of said partnership shall be Borin Art Products Company.

(2) The character of the business shall be manufacturing, buying and selling and generally dealing in all kinds of goods, wares and merchandise, household utilities, picture frames, mirrors, novelties and sundry items.

(3) The location of the principal place of business is in the Town of Cicero, County of Cook, Illinois.

(4) That the name and place of residence of each member General and Limited Partner being respectively designated, are as follows:

General Partner
Nathan Borin

Address
4300 Lake Shore Drive

Limited Partners
Claire Borin
L. V. Locker
Joseph Levinson
Harold Hoffman
Martin Kedzior
E. J. Ruzak

4300 Lake Shore Drive
2744 Winnemac Avenue
1860 S. Karlov Avenue
4949 N. Ridgeway Avenue
2223 Cortland Avenue
3120 S. Kedvale Avenue

Plaintiff's Exhibit No. 1—(Continued)

Limited Partners	Address
Simon Herr	518 Roscoe Street
Isadore Weinert	4818 N. Bernard Avenue
Milton Kessler	1852 S. Central Park Avenue
Lester Witte	134 S. LaSalle Street
Sarah Levin	5404 Drexel Blvd.
Sam Borin	5101 Drexel Blvd.
Mark Winston, Trustee for Bonny Joy Borin, Charles Borin (son) and Daniel Borin	609 Stratford Place
S. J. Weiss	3624 Franklin Blvd.
Ida Borin	5101 Drexel Blvd.,
Edith Krolik	3255 Eastwood Avenue

(5) The term for which the partnership is to exist is the period of one year commencing the 1st day of May 1943 and ending April 30, 1944, and thereafter from year to year unless at least six (6) calendar months before April 30th of any year, General Partner shall have delivered to the office of the partnership a written notice that he desires to terminate the partnership at the close of business on April 30th of the succeeding year, in which event the partnership shall terminate at the time so designated.

(6) That the amount of cash and a description of, and the agreed value of the property contributed by each Limited Partner is as follows:

General Partner:

Nathan Borin—Amount Contributed: 10% of assets of Borin Art Products Corporation of the agreed value of \$12,000.

Plaintiff's Exhibit No. 1—(Continued)

Limited Partners:

Claire Borin—Amount Contributed: 10% of company assets of the agreed value of \$12,000.

Harold Hoffman — Amount Contributed: 5% of company assets of the agreed value of \$6,000.

L. V. Locker—Amount Contributed: 5% of company assets of the agreed value of \$6,000.

Joseph Levinson — Amount Contributed: 5% of company assets of the agreed value of \$6,000.

Martin Kedzior—Amount Contributed: $31\frac{1}{8}\%$ of company assets of the agreed value of \$3,750.

E. J. Ruzak—Amount Contributed: $31\frac{1}{8}\%$ of company assets of the agreed value of \$3,750.

Simon Herr — Amount Contributed: $3-6\frac{7}{8}\%$ of company assets of the agreed value of \$4,500.

Isadore Weinert—Amount Contributed: $17\frac{1}{8}\%$ of company assets of the agreed value of \$2,250.

Milton Kessler—Amount Contributed: $17\frac{1}{8}\%$ of company assets of the agreed value of \$2,250.

Lester Witte — Amount Contributed: $6-2\frac{7}{8}\%$ of company assets of the agreed value of \$7,500.

Sarah Levin—Amount Contributed: 5% of company assets of the agreed value of \$6,000.

Sam Borin — Amount Contributed: 5% of company assets of the agreed value of \$6,000.

Mark Winston, Trustee for Bonny Joy Borin, Charles Borin (son) and Daniel Borin — Amount Contributed: 15% of company assets of the agreed value of \$18,000.

S. J. Weiss—Amount Contributed: 5% of company assets of the agreed value of \$6,000.

Plaintiff's Exhibit No. 1—(Continued)

Ida Borin—Amount Contributed: $7\frac{1}{2}\%$ of company assets of the agreed value of \$9,000.

Edith Krolik—Amount Contributed: $7\frac{1}{2}\%$ of company assets of the agreed value of \$9,000.

By agreement of all of the parties to this agreement the aforementioned Limited Partners shall share in the profits of said business as follows:

(a) Prior to a just apportionment of the remaining profits, there shall be deducted and paid to the following named persons the amounts set opposite their names.

Name	Salary
Nathan Borin	\$30,000.00
Claire Borin	15,000.00
L. V. Locker	6,500.00
Joseph Levinson	6,000.00
Harold Hoffman	6,000.00
Martin Kedzior	5,200.00
E. J. Ruzak	3,900.00
Simon Herr	2,600.00
Isadore Weinert	2,990.00
Milton Kessler	3,120.00
Sarah Levin	2,600.00
S. J. Weiss	5,200.00
Sam Borin	Stipulated commission on sales.

(b) That thereafter, all remaining profits shall be divided between all of the parties hereto so that each shall receive that percentage of the profits which conforms to the share of interest assigned by

Plaintiff's Exhibit No. 1—(Continued)

him to said partnership from the assets of Borin Art Products Corporation.

(7) Said partners have not contributed any additional cash or property to said Limited Partnership.

(8) The time when the contribution of the Limited Partners who have made contribution is to be returned, is at the termination of said partnership.

(9) The share of profits or other compensation by way of income which the said Limited Partners shall receive by reason of his contribution is set out in paragraph 6 above.

It is understood, however, that all of the foregoing charges are limited and conditioned upon each of the foregoing being actively engaged in the services of said Limited Partnership and in case any or either of the aforementioned parties ceases to be so actively engaged, for any reason whatsoever, then the amount set out opposite his name to be paid him prior to a distribution of profits shall be cancelled and annulled and be of no effect. Further provision for the distribution of profits is provided for in other paragraphs of this agreement.

(10) None of the Limited Partners is authorized to substitute an assignee as contributor in his place.

* * * * *

(18) The General Partner shall at all times devote his time and best efforts to the business of the partnership and except as herein otherwise limited, shall have full control, supervision and management thereof, and shall have full right, power and au-

Plaintiff's Exhibit No. 1—(Continued)

thority to discharge, with or without cause, any person employed by said partnership, even though he be an employee having a limited partnership interest therein.

* * * * *

(20) It is further understood and agreed that in any instance where any Limited Partner has become indebted to the General Partner by reason of the purchase of stock of Borin Art Products Corporation, or for any other reason, the said General Partner shall have a lien upon any and all profits payable to the said Limited Partner from said partnership until the sum due said General Partner from said Limited Partner or partners has been paid him.

(21) In the event that employment by the partnership of any of the Limited Partners is terminated for any reason, with or without cause, the partnership shall thereafter have a continuing option and right to re-purchase said Limited Partner's interest in said partnership. In the event said partnership elects to re-purchase the interest of such Limited Partner at any time thereafter, it shall pay therefor the book value thereof as determined by the last previous audit prior to such election. The payment therefor shall be in equal installments extending over a period of eighteen (18) months from the time of such election.

* * * * *

PLAINTIFF'S EXHIBIT No. 12
[For Identification]

Placita—Superior Court of Cook County
(Decree) Form 89
United States of America

State of Illinois,
County of Cook—ss.

Pleas, before the Honorable Donald S. McKinlay, one of the Judges of the Superior Court of Cook County, in the State of Illinois, holding a branch Court of Said Court, at a regular term of said Superior Court of Cook County, begun and holden at the Court House, in the City of Chicago, in said County, and State, on the first Monday, being the sixth day of December, in the year of our Lord one thousand nine hundred and forty-eight and of the Independence of the United States of America, the one hundred and seventy-three.

Present: The Honorable Donald S. McKinlay, Judge of the Superior Court of Cook County, John S. Boyle, State's Attorney, Elmer Michael Walsh, Sheriff of Cook County. Attest: Henry Sonnenschein, Clerk.

Be it remembered that heretofore, to wit: on the 20th day of December in the year of our Lord one thousand nine hundred and forty-eight the same being one of the days of the December Term of the Superior Court of Cook County the following among other proceedings were had in said Court and entered of record, to wit:

Plaintiff's Exhibit No. 12—(Continued)

State of Illinois,
County of Cook—ss.

In the Superior Court of Cook County
In Chancery

No. 45 S 5229

CLAIRE B. BORIN,
Plaintiff and Counter-Defendant,

vs.

NATHAN BORIN,
Defendant and Counter-Claimant.

DECREE

This cause coming on to be heard upon the exceptions of Nathan Borin, defendant and counter-claimant, to the report and supplemental report of William J. McGah, Master in Chancery of this court, upon the evidence and proofs taken by him on the petition of the said Claire B. Borin, plaintiff and counter-defendant, for attorneys' fees and suit money and the amended answer thereto of the said Nathan Borin, together with said Master's conclusions of fact and law thereon; and the court having duly considered said exceptions of Nathan Borin and having heard the arguments of his counsel and counsel for the said Claire B. Borin, and now being fully advised in the premises; Finds:

* * * * *

Plaintiff's Exhibit No. 12—(Continued)

3. That the said Claire B. Borin was by the verdict of the jury and the judgment of this court adjudged not guilty of the charges of adultery and other misconduct made against her by the said Nathan Borin in his counter complaint and amended and supplemental counter complaint in this cause; that the said Claire B. Borin properly and necessarily incurred charges for suit money as follows: (a) in the amount of \$729.90 for stenographic court reporting of the trial of said cause upon the issues raised by the counter complaint and amended and supplemental counter complaint of Nathan Borin; (b) in the amount of \$887.22 for investigating services rendered in preparation of her defense thereto; (c) in the amount of \$525.00 for the services of an attorney in Miami Beach, Florida, to interview prospective witnesses and to investigate the charges made by said Nathan Borin in his said counter complaint and amended and supplemental counter complaint as to acts of adultery therein alleged to have been committed by the said Claire B. Borin in the State of Florida; (d) in the amount of \$76.65 for necessary long distance telephone calls in connection with the defense of the said Claire B. Borin to the charges of adultery and misconduct made against her in said counter complaint and amended and supplemental counter complaint; that each of such amounts aforesaid was a fair, reasonable and the usual and customary charge for the services hereinabove in this paragraph itemized; that the said Claire B. Borin is lawfully entitled to the allow-

Plaintiff's Exhibit No. 12—(Continued)

ance of each of such charges, totalling the sum of \$2,218.77, as and for suit money by her incurred in the above entitled cause in the preparation of her defense and to defend the charges of adultery and other misconduct made by the said Nathan Borin against her in his said counter complaint and amended and supplemental counter complaint.

* * * * *

5. That the said Nathan Borin is the owner of ninety-six percent (96%) of all the capital stock of Limits Industrial Building Corporation, which corporation owns the property and premises commonly known as 1325 South Cicero Avenue, Chicago, Illinois; that the equity or net worth of said corporation in said real estate is now approximately \$235,000.00; that the net income of the said Nathan Borin was in the year 1945 \$69,285.64, in the year 1946 \$75,563.82 and in the year 1947 \$65,911.45; that in addition to said net income the defendant withdrew from Borin Art Products Company, a partnership of which he was general partner, the sum of \$118,120.52 between April 1, 1944 and October 31, 1947;

* * * * *

7. That the said Claire B. Borin had no means with which to employ counsel to represent her nor to prepare her defense to the charges of adultery and other misconduct made against her by the said Nathan Borin in his counter complaint and amended and supplemental counter complaint; and the said Claire B. Borin now has no means to pay for the

Plaintiff's Exhibit No. 12—(Continued)
suit money and attorneys' fees by her incurred as
aforesaid.

* * * * *

Dated: Dec. 20, 1948.

Enter: Donald S. McKinlay,
Judge.

PLAINTIFF'S EXHIBIT No. 13

(For Identification)

(Copy)

March 13, 1951

Mrs. Claire B. Buchman
10518 Wilshire
Los Angeles, California

Dear Claire:

I am enclosing herewith three forms in connection with your pending refund claim before the Department of Internal Revenue, which I wish you would sign and forward in the enclosed envelope at once.

These papers are merely extensions of forms that you have previously signed and extend the Statute of Limitations from June 30th, 1951 to June 30th, 1952. It is important that you take care of this immediately, as Mr. Malik, of the Internal Revenue Bureau, just called me and informed me that unless these forms are in their office within ten days, they will go ahead and make assessment, as they are compelled to do this by law. If, however, the forms are

Plaintiff's Exhibit No. 13—(Continued)

received by them in time, they will then be able to extend the matter, awaiting disposition of Nate Borin's matter.

I trust that Harry is fully recovered and is home from the hospital. I am sorry that I was unable to talk to him again, but at this time of the year I don't know whether I am coming or going. Tell him I hope to talk to him soon.

The above matter is very urgent, Claire, so please do not forget to take care of same at once.

With kindest personal regards, I am

As ever,

JAR'BL

Encl.

P. S. All forms are to be signed on the lines indicated by an "X", as Claire B. Buchman (formerly Claire Borin).

x x x x x

BORIN ART PRODUCTS CO.
1325 SOUTH CICERO AVENUE
CICERO, ILLINOIS

GOVERNMENT'S EXHIBIT "P"

- MAY 1, 1943 - JANUARY 31, 1944

NET INCOME FOR INCOME TAX REPORTING

<u>PARTNERS</u>	<u>PROPORTION OF CONTRIBUTIONS</u>	<u>TOTAL FOR INCOME TAX REPORTING</u>
Nathan Borin		
4300 Marine Dr. Chicago Ill	\$ 210.85	\$ 43,489.42
Claire Borin		
4300 Marine Dr. " "	210.85	32,239.42
L. V. Locker		
1325 S. Cicero Ave. Cicero, Ill	105.42	20,810.85 x
Joseph Levinson	" " 105.43	15,839.71
H. Hoffman	" " 105.42	15,714.71
M. Kenzior	" " 65.89	10,459.19
E. Rusiak	" " 65.89	9,484.19 x
S. Herr	" " 79.07	9,821.03
I. Weiment	" " 39.53	6,178.02
M. Kessler	" " 39.53	6,275.52 x
Julia Witte		
5056 Marine Drive, Chicago Ill.	131.78	13,118.39
S. Levin		
1325 S. Cicero Ave., Cicero, Ill	105.42	17,047.90 -
S. Borin " " " "	105.42	19,832.36
M. Winston Trustee		
1325 S. Cicero Ave. " "	316.27	31,484.14
S. J. Weiss		
1325 S Cicero Ave. " "	105.43	20,412.14 x
I. Borin		
1325 S Cicero Ave. " "	158.15	20,345.27
E. Kroluk " "	158.15	15,742.07
	<u>\$2,108.50</u>	<u>\$308,291.33</u>

x x x x x

Borin Art Products Co.
1325 So. Cicero Avenue
Chicago 50, Illinois

Year 1/31/45

GOVERNMENT'S EXHIBIT "Q"

Schedule I - Page 4 - Partner's Share of Income & Credits

Name of Partner	Time Devoted to Business	Address of Partner	Column 2	Column 9
			Ordinary Net Income	Contribution
Nathan Borin	All	4300 Lake Shore Drive, Chgo.	\$ 61,028.35	\$ 243.17
Claire Borin —	Part	4300 Lake Shore Drive, "	46,028.35	243.17
Harold Hoffman	All	4949 N. Ridgeway Ave., "	25,106.05	121.58
L. V. Locker	All	2744 Winnemac Avenue, "	30,338.56	121.58
Joseph Levinson	All	1861 S. Karlov Avenue, "	25,556.06	121.58
Martin Kedzior	All	1431 Wicker Park Avenue, "	17,753.26	76.11
Simon Herr	Part	518 Roscoe Street, "	14,235.63	91.19
Isadore Weinert	All	4818 N. Bernard Avenue, "	11,664.71	45.71
Milton Kessler	In armed forces	1852 S. Central Park Ave., "	5,832.84	45.71
Julia Witte —	None	5056 Marine Drive, "	19,392.73	151.99
Sara Levin —	None	5404 Drexel Blvd., "	18,114.18	121.58
Sam Borin —	All	5101 Drexel Blvd., "	31,937.79	121.58
Mark Winston - trustee - for Bonny Joy Borin				
Charles Borin				
Daniel Borin	None	609 Stratford Place, "	46,572.59	364.98
S. J. Weiss	All	2163 N. Mozart Avenue, "	27,217.74	121.58
Ida Borin —	None	5105 Drexel Blvd., "	23,271.26	182.37
Edyth Rosen Krolik	None	3255 Eastwood Avenue, "	23,271.26	182.37
Totals			\$ 427,321.36	\$ 2,356.25

XXXXX

Year Ended January 31, 1946

Schedule I, Page 4 - Partner's Income

GOVERNMENT'S EXHIBIT "R"

Name and Address	Time	Net	Income	Col. 2	Col. 9
				Ordinary	Contri- butions
Nathan Borin	All	\$	73,722.09	\$	741.12
Claire Borin	None		21,534.18		-
H. Hoffman	All		16,887.60		184.56
L. V. Locker	All		17,387.60		184.56
J. Levinson	All		17,387.60		184.56
M. Kedzior	All		12,004.75		115.35
I. Weinert	All		7,072.85		69.21
M. Kessler	All		7,202.85		69.21
S. Levin	None		10,887.60		184.56
S. Borin	All		22,240.28		184.56
M. Winston, Trustee for Benny Joy Borin for Daniel Borin			10,821.82		-
Chas. Borin	None		10,821.82		-
S. J. Weiss	All		10,997.82		186.42
I. Borin	None		17,387.60		184.56
E. Krollik	None		16,503.10		279.74
	None		16,503.10		279.74
Total Schedule I, Page 4			\$289,362.66		\$2,848.15

✓ x ✓
 rin Art Products Company
 W. North Bank Drive
 cago 10, Illinois

GOVERNMENT'S EXHIBIT "S"

1065 - 1946 (Amended)

Schedule H - Partners' Capital Accounts

		E N D		O F Y E A R	
	Beginning of Year	Original Return	Additional Net Loss	Amended Return	
GENERAL PARTNERS					
Nathan Borin	\$ 10,181.05	\$ 85,419.40	\$ 33,838.68	\$119,258.0	
Samuel Borin	7,602.61	8,463.27	8,426.75	36.5	
Simon J. Weiss	6,982.74	12,586.64	8,426.75	4,159.8	
LIMITED PARTNERS					
Sara Levin	20,570.21	30,179.32	8,426.75	21,752.5	
Charles Borin	30,997.03	25,368.45	8,512.34	16,856.1	
Ada Borin	36,452.72	51,197.75	12,771.80	38,425.9	
Edyth Krolik	20,984.12	28,728.79	12,771.80	15,956.9	
Mark Winston, Trustee for:					
Bonny Joy Borin	37,176.28	45,771.16	8,518.92	37,252.2	
Daniel Borin	37,176.28	45,771.16	8,518.92	37,252.2	
LIMITED LIMITED PARTNERS					
Clair Borin	11,535.34	11,740.47	-	11,740.4	
Arnold Hoffman	8,863.54	3,804.79	-	3,804.7	
Ernest V. Locker (deceased)	9,057.37	957.17	-	957.1	
Joseph Levinson	10,301.30	5,181.30	-	5,181.3	
Martin Kedzior	5,715.50	2,845.50	-	2,845.5	
Adore Weinert	6,748.11	5,376.78	-	5,376.7	
Wilton Kessler	5,496.89	3,879.68	-	3,879.6	
TOTALS	\$222,408.31	\$172,951.89	\$110,212.71	\$ 62,739.1	

GOVERNMENT'S EXHIBIT "T"

State of Illinois,
County of Cook—ss.

In the Circuit Court of Cook County
In Chancery

No. 46 C 1685

CLAIRE BORIN

vs.

NATHAN BORIN, L. V. LOCKER, SPRINGFIELD FIRE & MARINE INSURANCE CO., AETNA INSURANCE CO., FIREMAN'S FUND INSURANCE CO., LIVERPOOL & LONDON & GLOBE INSURANCE CO., NORTHERN ASSURANCE CO. OF LONDON, GLENS FALLS INSURANCE CO., HOME INSURANCE CO., UNITED STATES FIRE INSURANCE CO., and UNDERWRITERS SERVICE ASSOCIATION.

COMPLAINT IN CHANCERY FOR DISSOLUTION OF PARTNERSHIP, ACCOUNTING, AND OTHER RELIEF

Plaintiff, Claire Borin, by Lederer, Livingston, Kahn & Adsit, her attorneys, complains of the defendant, Nathan Borin, the defendant, L. V. Locker, and the defendants, Springfield Fire & Marine Insurance Co., Aetna Insurance Co., Fireman's Fund Insurance Co., Liverpool & London & Globe

Government's Exhibit "T"—(Continued)

Insurance Co., Northern Assurance Co. of London, Glens Falls Insurance Co., Home Insurance Co., United States Fire Insurance Co., and Underwriters Service Association and for grounds of said Complaint shows to the Court the following:

(1) That plaintiff and defendant Nathan Borin are residents of the City of Chicago, County of Cook and State of Illinois; that they are husband and wife; that prior to February of 1945 they resided together as husband and wife but since that time they have been living separate and apart and are presently parties to a certain divorce proceeding heretofore filed in the Superior Court of Cook County.

(2) That on or about the first day of May, 1943, the defendant, Borin, and the plaintiff and certain other individuals, including the defendant, Locker, entered into a certain limited partnership agreement; that said agreement was duly recorded in the office of the Recorder of Deeds of Cook County, Illinois, on May 20, 1943, as Document 13078304 in Book 38240 of Records, at page 212; that a copy of said limited partnership agreement is attached hereto, marked Exhibit "A", and by express reference made a part hereof.

(3) That in pursuance of the terms of said Exhibit "A" the defendant Nathan Borin as the general and managing partner of said partnership operated a business known as the Borin Art Products Company from the date of the agreement down to on or about the 10th day of January, 1946, when the

Government's Exhibit "T"—(Continued)

plant of said limited partnership burned to the ground and was totally destroyed.

(4) That during all of the time said partnership was in existence the same was entirely under the control, domination and direction of the defendant Nathan Borin; that the books of account of said partnership were maintained by the defendant Locker who acted as comptroller of said enterprise, but that said Locker made entries in the books of account in pursuance of the instructions and directions of the said defendant Borin and of no other person whatsoever.

(5) That the plaintiff has remained as a limited partner in said enterprise from the commencement date thereof to the present time; that by reason of the facts hereinafter set forth she is no longer considered as a partner by the said defendant Borin; that under date of September 18, 1945, she received from the Borin Art Products Company a letter purporting to terminate plaintiff's interest in said partnership, copy of which letter is attached hereto, marked Exhibit "B", and expressly made a part hereof; that under date of September 21, 1945, plaintiff, through her attorneys, replied to said purported termination and averred therein that the notice of termination was not proper under the terms of the partnership agreement, copy of which said letter, marked Exhibit "C", and attached hereto, is expressly made a part hereof; that in reply thereto plaintiff received a letter bearing date of September 25, 1945, copy of which is attached

Government Exhibit "T"—(Continued)

hereto, marked Exhibit "D", and made a part hereof; that the plaintiff avers and alleges that there has been no proper termination of her interest in the partnership and that therefore she is a partner in pursuance of the terms of the agreement attached hereto as Exhibit "A" until the date of the filing of this Complaint.

(6) Plaintiff further avers that by reason of the conduct of the defendant Nathan Borin, as will be more fully hereinafter alleged, plaintiff desires to withdraw from said partnership as of this date.

(7) Plaintiff further alleges that after the letter attached hereto and marked Exhibit "D" plaintiff endeavored to have accountants retained by her examine the books of the partnership to determine her standing therein and the amount due to her as a result of the partnership operations; that thereafter the defendant furnished to the plaintiff a statement setting forth that as of September 12, 1945, the original capital of the plaintiff in said partnership, plus her profit and salary, amounted to \$120,864.33, and that her alleged withdrawals from the said partnership amounted to \$96,317.33; that in truth and in fact plaintiff has made no such withdrawals but that, at the direction of the defendant, Nathan Borin, there has been charged to her account on said partnership books numerous items of expense which are in truth and in fact not chargeable to her; that the said defendant Borin, among other things, has charged to the plaintiff's account expenses of the parties in maintaining their household, purchases made for the minor daughter of the

Government's Exhibit "T"—(Continued)

parties, items for articles which the said Nathan Borin had bestowed upon the plaintiff as gifts, items consisting of checks made payable to the plaintiff, which were fraudulently endorsed by the defendant, Borin, and by other persons at the direction of the defendant Borin, without the knowledge, consent or authority of the plaintiff, items of traveling expense for the plaintiff and defendant Borin for trips which they took together, items of attorneys' fees, which were the sole obligation of the defendant Borin, items concerning which this plaintiff has no knowledge, loans allegedly made by the defendant to brothers of the plaintiff, items lost by the defendant Borin as a result of playing cards and gambling, items for night club expenses and hotel bills of defendant, Borin and other persons unknown to plaintiff, a bill for a doctor who operated upon the minor child of the parties hereto and numerous other items of similar ilk; that while the plaintiff has demanded that said account be itemized and submitted to the plaintiff, or that she be permitted to examine the books, checks, records and vouchers of said defendant, the defendant Borin and the defendant Locker have refused and still continue to refuse to permit accountants or auditors retained by the plaintiff to examine said books and records; that in truth and in fact the excess of the amount of capital, salaries and profits over the amount of expenditures properly chargeable to the plaintiff as of September 12th is approximately \$75,000.

Government's Exhibit "T"—(Continued)

(8) That defendant Borin has, on numerous occasions during the time that the partnership was in existence, charged as expenses of the partnership sundry amounts which are in truth and in fact directly chargeable to the said defendant; that plaintiff is informed and believes, and upon such information and belief states the fact to be that defendant Borin has charged vast sums of money which he has expended in night clubs, cabarets and other places of entertainment as partnership expenses, when, in fact, they were not; that he has charged numerous items involving hotel bills for his own personal pleasure to the partnership as expenses; that he has charged the purchase and operation of two Cadillac automobiles to the partnership as firm expenses, when, in fact, they were for the individual use of the defendant Borin; that he has given lavish gifts costing substantial sums of money to various persons and charged the same as an expense of the partnership, when, in truth and in fact, said gifts were made solely for the individual benefit of the defendant Borin; that he has in numerous other ways utilized the funds of the partnership for his own individual benefit without charging the same to his individual account; that as a result thereof the share of the profits due to the plaintiff herein has been greatly lessened and reduced; that the defendant Locker has improperly and fraudulently made the entries upon the books of the partnership at the direction and instruction of the defendant, Borin, and without regard to the interests and

Government's Exhibit "T"—(Continued)

rights of the other partners including the plaintiff and to their substantial detriment; and that upon a true and correct accounting and a proper allocation of said expenses the share of the partnership belonging to the plaintiff will be greatly increased.

(9) That since September 12, 1945, and until January of 1946, the partnership continued to operate under the direction and control of the defendant, Borin, and to make large profits; that the plaintiff has requested that she be furnished with a statement of the profits earned and the amounts that should be credited to her account in the partnership, but that the defendant, Borin, and the defendant, Locker, have refused and continue to refuse to furnish this information to the plaintiff and have refused and continue to refuse to permit her or her agents to examine the books of the partnership; that plaintiff believes, and upon information and belief states the fact to be that the profits of the partnership in the four-month period following September 12, 1945, are in excess of \$200,000; that under the terms of said partnership agreement plaintiff is entitled to ten per cent thereof; that, as hereinbefore alleged, the plant operated by said defendant, Borin, as the general partner of the limited partnership known as Borin Art Products Company was completely destroyed by fire in January of 1946; that the effect of said fire was to force the discontinuance of the business operated by the partnership and to transfer said partnership assets into a number of causes of action against the

Government's Exhibit "T"—(Continued)

insurance companies in which said partnership was insured; that the defendants, Springfield Fire & Marine Insurance Co., Aetna Insurance Co., Fireman's Fund Insurance Co., Liverpool & London & Globe Insurance Co., Northern Assurance Co. of London, Glens Falls Insurance Co., Home Insurance Co., United States Fire Insurance Co., and Underwriters Service Association, carried policies of insurance naming Borin Art Products Company as the assured and protected said partnership against loss by fire, and also that said partnership was protected against loss of profits resulting from said fire, that by reason of said fact, the plaintiff's interest in the assets of the partnership now consists substantially of a 10% interest in the claims and causes of action against the aforesaid insurance companies, and therefore she makes said insurance companies parties defendant hereto.

(10) That the defendant, Borin, has threatened to collect the proceeds of the aforementioned insurance policies from the defendant companies and to take the same and remove himself from the jurisdiction of this Court. Plaintiff avers that unless restrained by an order of this Court, she fears that the defendant, Borin, will collect the proceeds of said policies and will remove himself from the jurisdiction of this Court and as a result thereof that plaintiff will be deprived of her remedy in the premises. Forasmuch, therefore, as plaintiff is without adequate remedy in the premises, except in a court of equity, and has no remedy at law, plaintiff prays for the following:

Government's Exhibit "T"—(Continued)

(a) That the limited partnership described in the Complaint be declared dissolved insofar as the plaintiff is concerned as of the date of the filing of this Complaint;

(b) That an accounting may be had and taken of all and every the said co-partnership dealings and transactions from the time of the commencement thereof, and also an accounting of the moneys received and paid to the plaintiff and the defendant, Borin, in regard thereto;

(c) That the defendant, Borin, may be decreed to pay to the plaintiff what, if anything, shall, upon the taking of the said accounts, appear to be due to her;

(d) That the defendant, Nathan Borin, may be restrained and enjoined by the order of this Honorable Court from collecting the proceeds of the aforementioned insurance policies pending the disposition of this cause and the payment to the plaintiff of the amount due to her;

(e) That the defendants, Springfield Fire & Marine Insurance Co., Aetna Insurance Co., Fireman's Fund Insurance Co., Liverpool & London & Globe Insurance Co., Northern Assurance Co. of London, Glens Falls Insurance Co., Home Insurance Co., United States Fire Insurance Co., and Underwriters Service Association, be restrained and enjoined from paying to the defendant Borin, or to any assignee or transferee of said defendant, Borin, such sums as they may be obligated to pay under the terms of the said insurance policies covering the premises, chattels, equipment and profits of the said

Government's Exhibit "T"—(Continued)
partnership; that said corporate defendants be ordered and directed to pay to the plaintiff such sums of money as this Court may find are justly due to her as and for her interest in said partnership.

(f) That the plaintiff may have such other and further relief as equity may require and to the Court shall seem just and proper.

/s/ Claire B. Borin.

Lederer, Livingston, Kahn & Adsit, 160 North
La Salle Street, Chicago, Illinois, Central 3985,
Attorneys for Plaintiff.

State of Illinois,
County of Cook—ss.

Claire Borin, being first duly sworn, upon her oath, deposes and says that she has read the foregoing complaint by her subscribed; that she knows the contents thereof, except as to those matters stated to be on information and belief; that said complaint is true in substance and in fact except as to those matters stated to be on information and belief and as to said matters, she believes them to be true. Further affiant says not.

/s/ Claire B. Borin.

Subscribed and sworn to before me this 8th day
of February, 1946.

/s/ (Illegible),

Notary Public. My Commission Expires Nov. 12,
1946.

GOVERNMENT'S EXHIBIT "U"

In the Appellate Court of Illinois
First District

April Term. A. D. 1946

No. 43689

CLAIRE B. BORIN, Appellee,

vs.

NATHHAN BORIN, Appellant.

Appeal from Superior Court, Cook County.

Honorable Frank M. Padden, Judge Presiding.

ABSTRACT OF RECORD

Simon Herr,
Harold Tucker,
Attorneys for Appellant.

[Pen Notation: Need not be certified. George T.
Altman.]

In the Appellate Court of Illinois
First District

April Term, A. D. 1946

CLAIRE B. BORIN, Plaintiff,

vs.

NATHAN BORIN, Defendant.

Appeal from Superior Court, Cook County.

Honorable Frank M. Padden, Judge Presiding.

Government's Exhibit "U"—(Continued)

ABSTRACT OF RECORD

Placita.

Complaint for divorce filed March 22, 1945. Complaint alleges that both parties were residents of the City of Chicago, County of Cook and State of Illinois for one year last past immediately prior to the filing of complaint; that they were married on November 11, 1933, at Agua Caliente, Mexico, and lived together until February 14, 1945; that during all of said time the plaintiff conducted herself towards her husband as a good, true, chaste and affectionate wife; that there was one child born of said marriage, namely Bonnie Joy Borin, then three and one-half years old; that said child is in the care and custody of plaintiff, that she is a fit and proper person and entitled to retain her care, custody and control.

That shortly after the marriage the defendant was guilty of extreme and repeated cruelty; that on three prior occasions the plaintiff found it necessary to file actions for divorce; that on these occasions reconciliations took place. Three acts of cruelty are alleged as occurring on June 29, 1944, July 2, 1944 and in the month of January, 1945; that defendant is a man of violent and ungovernable temper, caused plaintiff great mental pain, anguish and suffering; has used vile, ugly and offensive language, and threatened her life. Writ of injunction asked to restrain defendant from committing any such acts. Plaintiff did on February 14, 1945, at the request of defendant, in order to

Government's Exhibit "U"—(Continued)

safeguard the health of the minor child, go to Florida for a period of approximately four weeks; while there she was accused by defendant of wrongful associations and improper conduct and threatened her life; returned to Chicago with the child on March 20, 1945, to find that defendant had removed himself and his effects from their apartment on or about March 18, 1945.

Defendant is a man of great wealth and large income and well able suitably and properly to maintain plaintiff and her minor child in the station in life in which they have lived; that defendant for some time past, especially the past several years has been associated with and been in the company of female persons from the theatrical and night club professions, has lavished large sums of money on clothes and entertainment for such persons; said persons frequenting his living quarters in New York on his visits there and the home of plaintiff and defendant in Chicago during plaintiff's absence.

For many years prior to May 1, 1943, defendant has been engaged in a business known as Borin Art Products Corporation, manufacturing various art products, with offices in Chicago, Illinois, and various other cities; prior to May 1, 1943, plaintiff acquired a stock ownership in the business, namely 80 shares or ten per cent of the outstanding stock. A trust created, Mark Winston, sole trustee, for the benefit of Bonnie Joy Borin and two other children of defendant by a prior marriage having 120 shares. May 1, 1943, stockholders dissolved Borin Art

Government's Exhibit "U"—(Continued)

Products Corporation and entered into a partnership agreement; plaintiff's interest in said business ten per cent and that of trust fifteen per cent. Fearful that defendant will withdraw, dissipate and misappropriate all or part of the assets of the business, among which is cash on hand and on deposit in various banks, securities, inventories, fixtures, accounts receivable and various other items of large and substantial value, plaintiff seeks an injunction to issue without notice, and that she be excused from posting a bond to restrain said action.

* * * * *

GOVERNMENT'S EXHIBIT "W"

CLAIM

* * * * *

Name of taxpayer or purchaser of stamps: Claire Morse (formerly Claire Borin).

* * * * *

The income on which claimant paid income taxes in the amount of \$14,925.62 for the taxable year 1944 consisted of \$32,239.42 attributed to claimant as a limited partner in the Borin Art Products Co., 1325 S. Cicero Avenue, Cicero, Illinois. Claimant was not, during the taxable year 1944 or at any other time, a bona fide limited partner in said firm but was merely so designated for tax purposes by her then husband, Nathan Borin, and never in fact received the income attributed to and reported by her at the said Borin's direction.

* * * * *

[Endorsed]: No. 15963. United States Court of Appeals for the Ninth Circuit. Claire B. Morse, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: April 7, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In The United States Court of Appeals
For The Ninth Circuit

. No. 15963

CLAIRE B. MORSE, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY

Appellant intends to rely upon the following points:

1. Except insofar as consistent with the findings proposed in the District Court by appellant, the findings of that court are not supported by the evidence.

2. The findings proposed in the District Court

by appellant are relevant and fully supported by the evidence, and should have been adopted by that court. In failing to include in its findings any of said findings proposed by appellant, the District Court failed to carry out its duty under Rule 52 of the Federal Rules of Civil Procedure.

3. The evidence does not support the findings of the District Court that prior to the dissolution of the Borin Art Products Corporation appellant was the "owner" of 80 shares of stock of said corporation.

4. The government admitted that the 80 shares of stock found by the court to have been "owned" by appellant were transferred from the name of Nathan Borin to that of appellant without her knowledge "prior to the dissolution of the corporation as a part of the scheme for dissolution of the corporation and creating the partnership," and said admission is supported by documents in the government's file.

5. The evidence does not support the finding of the District Court that appellant received a 10% interest in an entity known as Borin Art Products Company.

6. The evidence does not support the implied finding of the District Court that the said entity was in fact a true and bona fide partnership.

7. The evidence on the contrary supports the conclusion that the said entity was not a true and bona fide partnership.

8. There is no evidence whatever to support the finding of an "agreed value" of \$12,000.00 shown in Paragraph VIII of the District Court's findings.

9. The evidence on the contrary supports the conclusion that if any such interest did exist its value was less than zero.

10. If there was an "agreed value," such value has no relevance to this proceeding, since the parties hereto had no connection with the purported agreement.

11. There is no finding that appellant actually received from Borin Art Products Corporation any money or property of any kind.

12. There is no finding that appellant received anything from Borin Art Products Corporation, directly or indirectly, of an actual value of \$12,000.00 or any other amount.

13. Appellant was not estopped to deny that she ever owned any stock in the said corporation or that she ever received any interest in the said partnership.

14. Appellant did not ratify any partnership agreement, and appellee is not in a position to assert any such ratification.

15. Appellee failed to plead either estoppel or ratification.

16. Appellee failed to prove either estoppel or ratification.

17. Assuming, without admitting, that appellant was a limited partner in said entity, Borin Art Products Company, she would not, as such limited partner, be personally liable for any debts of the partnership where, as here found by the District Court, she did not receive any money, property, or other assets from the partnership.

18. If there was any transferee liability of appellant in respect of any tax liability of said corporation, said liability was exhausted by the payment which was made by others of the assessment of \$12,000.00 against appellant in respect of taxes of the said corporation for the years 1940 and 1941.

19. Appellee failed to plead or prove that there was in fact any unpaid balance of taxes of said Borin Art Products Corporation for any period.

20. The District Court erred in overruling appellant's objections to the introduction of evidence in each instance shown in the record designated by appellant for printing. The reference here is to both documentary and oral evidence.

21. Appellee's exhibit U is not properly a part of the record, having been held by the court during trial to be immaterial, and appellant having been led by such holding to take no action during trial to strike the exhibit as being hearsay.

22. Appellant's exhibits for identification, Nos. 12 and 13, were properly admissible, and should have been admitted.

23. The burden of proving appellant was liable as transferee was upon appellee.

24. The District Court erred in denying the motion in respect of certain exhibits filed January 24, 1958, by appellant.

25. Appellant relies further upon all of the points made in her objections to findings of fact, conclusions of law, and judgment lodged by the government, and upon the points made in her motion for new trial. (Both of said documents have been designated for printing.)

26. The District Court should have granted appellant's motion for new trial.

27. The District Court's conclusions of law are not supported by its findings.

28. The District Court's judgment is not supported by its findings and conclusions of law.

/s/ GEORGE T. ALTMAN,
Attorney for Appellant.

[Endorsed]: Filed April 12, 1958. Paul P. O'Brien, Clerk.

